

**ACTS**  
**OF THE**  
**LEGISLATURE**  
**OF**  
**WEST VIRGINIA**



**Regular Session, 1984**

**First Extraordinary Session, 1984**

BJW Printers, Beckley, W. Va.



C-641

## FOREWORD

This volume contains the Acts of the Second Regular Session and First Extraordinary Session of the 66th Legislature.

### Second Regular Session, 1984

The Second Regular Session of the 66th Legislature convened on January 11, 1984. The constitutional expiration date of the session was midnight, March 10, 1984. However, the session was extended by Proclamation of the Governor for consideration of the annual Budget Bill up to and including March 14, 1984. The Legislature passed the Budget on March 14, 1984, and adjourned *sine die* on that date.

Bills totaling 1,827 were introduced in the two houses during the session (1082 House and 745 Senate). The Legislature passed 190 bills, 116 House and 74 Senate. The Governor approved 186 bills and vetoed 3 (S. B. 28, H. B. 1008 and H. B. 1256).

One bill (S. B. 431, establishing the West Virginia Thoroughbred Development Fund) was amended and repassed by the Legislature and subsequently approved by the Governor, making a net total of 187 bills enacted into law.

There were 70 concurrent resolutions introduced during the session, 37 House and 33 Senate, of which four House and four Senate were adopted. A total of 54 joint resolutions were introduced proposing amendments to the Constitution of the State, 37 House and 17 Senate, of which four were adopted (H. J. R. 21, H. J. R. 32, S. J. R. 1 and S. J. R. 4). The House had 23 House resolutions and the Senate had 27 Senate resolutions, of which 15 House and 25 Senate were adopted.

The Senate failed to pass 62 House bills passed by the House and 92 Senate bills failed passage by the House. Five bills died in conference, three House and two Senate.

### First Extraordinary Session, 1984

The First Extraordinary Session of 1984 of the Sixty-sixth Legislature convened on May 19, 1984, and adjourned *sine die* on that date.

The Proclamation and amended Proclamation of the Governor convening the session contained three items of business for consideration.

There were four House bill and six Senate bills introduced. The Legislature passed all six Senate bills, of which two were vetoed by the Governor leaving a net of four bills enacted into law.

There was one Senate concurrent resolution offered and adopted. There were two House resolutions introduced, of which both were adopted. Four Senate resolutions were introduced and adopted.

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

DONALD L. KOPP, *Clerk*  
*House of Delegates*

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#### ERRATA

Page 187, Chapter 27, S. B. 85, line 114, strike out the second word "of" and insert "or".

Page 546, Chapter 77, S. B. 672, lines 24 and 25, strike out the words "of this chapter".

Chapter 136, S. B. 245, page 794, §101, line 1; §102, lines 1, 3, 10; §103, line 1 two times, lines 3, 5; page 795, §104, line 1; §106, line 1; §101, line 1; page 796, §101, lines 8, 10; page 798, §205, line 18; §206, line 9; §208, line 1, word "article" in each of said lines should be "chapter". Page 799, §301, line 10, second word "article" should be "chapter". Page 799, §301, line 28; page 800, §102, line 4; and page 809, §101, lines 8, 10, 33, word "article" in each of said lines should be "chapter".

Page 947, Chapter 159, H. B. 1405, lines 8 and 9, strike out the words "equal to the duration of the proposed time-sharing".

## MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1984

## OFFICERS

*Speaker*—Clyde M. See, Jr., Moorefield*Speaker Pro Tem*—Larry E. Schifano, Morgantown*Clerk*—Donald L. Kopp, Clarksburg*Sergeant at Arms*—Oce W. Smith, Jr., Fairmont*Doorkeeper*—Dannie Wingo, Yukon

District	Name	Address
First	Joseph B. Cipriani (D)	Weirton
	Sam Love (D)	Weirton
Second	Roy E. Givens (D)	Wellsburg
	Bernard V. Kelly (D)	Weirton
Third	Thais Blatnik (D)	Wheeling
	David B. McKinley (R)	Wheeling
	Paul J. Otte (R)	Wheeling
Fourth	Larry Wiedebusch (D)	Glen Dale
	Albert D. Yanni (D)	Glen Dale
Fifth	Joseph M. Ballouz (D)	New Martinsville
Sixth	Larry D. Swann (R)	West Union
Seventh	Gregory K. Smith (D)	St. Marys
Eighth	Joseph P. Albright (D)	Parkersburg
	Stephen C. Bird (D)	Parkersburg
	George E. Farley (D)	Parkersburg
	William P. A. Nicely (R)	Parkersburg
	Sandy Rogers (R)	Vienna
Ninth	Marjorie H. Burke (D)	Glenville
	Robert H. Kidd (D)	Sutton
Tenth	Robert L. Sergent (D)	Walton
Eleventh	William F. Carmichael (R)	Ripley
Twelfth	William J. Artrip (D)	Southside
	James M. Casey (D)	Pt. Pleasant
	Charles H. Damron (D)	Pt. Pleasant
	Joan McCallister (D)	Winfield
Thirteenth	Robert L. Childers (D)	Huntington
	Sue A. Davis (D)	Huntington
	Robert Chambers (D)	Huntington
	Patricia O. Hartman (D)	Huntington
	Charles M. Polan, Jr. (D)	Huntington
Fourteenth	Forest Underwood (D)	Huntington
	Burnie Roger Crabtree (D)	Genoa
Fifteenth	Tommy Toler (D)	Wayne
	Irvine Damron (D)	Lenore
Sixteenth	James Simpkins (D)	Meador
	Sammy D. Dalton (D)	Harts
Seventeenth	Joe C. Ferrell (D)	Logan
	Charles Gilliam (D)	Logan
	R. L. McCormick (D)	Logan
Eighteenth	Robert L. Mullett (D)	Peytona
Nineteenth	Ernest C. Moore (D)	Thorpe
	Rick Murensky (D)	Welch
Twentieth	Fred E. Decker (D)	Pineville
	Bruce O. Williams (D)	Rock View
Twenty-first	Donald Anello (D)	Bramwell
	Gilbert E. Bailey (D)	Princeton
	Richard D. Flanigan (D)	Princeton
	Tony E. Whitlow (D)	Kellysville
	W. Marion Shiflet (D)	Union

<sup>1</sup> Appointed a member of the House of Delegates January 5, 1984, to fill the vacancy created by the resignation of the Honorable Morris L. Meadows.



## HOUSE OF DELEGATES

District	Name	Address
Twenty-second	Jack E. Holt (D)	Hinton
	Paul R. Hutchinson, Jr. (D)	Beckley
	Sterling T. Lewis, Jr. (D)	Daniels
	Jack J. Roop (D)	Beckley
	William R. Wooton (D)	Beckley
Twenty-third	June Bledsoe (D)	Charleston
	Bonnie L. Brown (D)	South Charleston
	Lee F. Feinberg (D)	Charleston
	James F. Humphreys (D)	Nitro
	Thomas A. Knight (D)	Charleston
	John MacCorkle (D)	Charleston
	Lyle Sattes (D)	Charleston
	Rudy Seacrist (D)	Charleston
	Sharon Spencer (D)	Charleston
	Jane H. Theiling (D)	Charleston
Leonard I. Underwood (D)	St. Albans	
Martha G. Wehrle (D)	Charleston	
Twenty-fourth	Pat R. Hamilton (D)	Oak Hill
	John W. Hatcher, Jr. (D)	Fayetteville
	Adam Toney (D)	Oak Hill
Twenty-fifth	Betty D. Crookshanks (D)	Rupert
	Sarah Lee Neal (D)	Rainelle
Twenty-sixth	Robert E. Goff (D)	Cowen
	Ralph H. Johnson (D)	Richwood
Twenty-seventh	Charles F. Jordan (D)	Elkins
	Joe E. Martin (D)	Elkins
Twenty-eighth	Joe E. Miller (D)	Philippi
	Charles R. Shaffer (R)	Buckhannon
Twenty-ninth	Robert J. Conley (R)	Weston
Thirtieth	Percy C. Ashcraft II (D)	Clarksburg
	Floyd Fullen (D)	Shinnston
	<sup>2</sup> Joseph M. Minard (D)	Clarksburg
	Kenneth H. Riffle (D)	Bridgeport
Thirty-first	Joe Manchin III (D)	Fairmont
	Cody A. Stacher (D)	Fairmont
	Bill Stewart (D)	Fairmont
	Benjamin N. Springston (R)	Fairmont
Thirty-second	Shelby (Bosley) Leary (D)	Blacksville
	Clyde Hagedorn (D)	Morgantown
	Elizabeth Martin (D)	Morgantown
	Larry E. Schifano (D)	Morgantown
Thirty-third	<sup>3</sup> Kevin Kouy (D)	Masontown
	James W. Teets (R)	Terra Alta
Thirty-fourth	Marc L. Harman (R)	Petersburg
	Stephen C. Sluss (D)	Fort Ashby
Thirty-fifth	Clyde M. See, Jr. (D)	Moorefield
Thirty-sixth	Daniel L. Shanholtz (R)	Springfield
Thirty-seventh	Patrick H. Murphy (D)	Martinsburg
Thirty-eighth	Larry V. Faircloth (R)	Inwood
Thirty-ninth	John Doyle (D)	Shepherdstown
Fortieth	Thomas W. Steptoe, Jr. (D)	Charles Town

<sup>2</sup> Appointed a member of the House of Delegates January 10, 1983, to fill the vacancy created by the resignation of the Honorable Donald L. Kopp.

<sup>3</sup> Appointed a member of the House of Delegates September 19, 1983, to fill the vacancy created by the resignation of the Honorable Ronald R. Brown.

(D) Democrats	77
(R) Republicans	13
Total	100

# MEMBERS OF THE SENATE

REGULAR SESSION, 1984

## OFFICERS

*President*—Warren R. McGraw, Pineville  
*President Pro Tem*—James L. Davis, Fairmont  
*Clerk*—Todd C. Willis, Logan  
*Sergeant at Arms*—Emery Woodall, Hamlin  
*Doorkeeper*—Aubrey R. Grizzell, St. Albans

District	Name	Address
First	John G. Chernenko (D)	Wellsburg
	<sup>1</sup> Gary A. Sacco (D)	Wheeling
Second	Thomas E. Loehr (D)	New Martinsville
	*Dan Tonkovich (D)	Benwood
Third	Keith Burdette (D)	Parkersburg
	*Sam White (R)	St. Marys
Fourth	Oshel B. Craig (D)	Hurricane
	*Orton A. Jones (R)	Spencer
Fifth	*Homer Heck (D)	Ceredo
	Robert R. Nelson (D)	Huntington
Sixth	H. Truman Chafin (D)	Williamson
	*Lacy Wright, Jr. (D)	Bradshaw
Seventh	J. Robert Rogers (D)	Madison
	*Earl Ray Tomblin (D)	Chapmanville
Eighth	John "Si" Boettner, Jr. (D)	Charleston
	*Mario J. Palumbo (D)	Charleston
Ninth	*Warren R. McGraw (D)	Pineville
	Ted T. Stacy (D)	Beckley
Tenth	*Odell H. Huffman (D)	Princeton
	Frederick L. Parker (D)	Greenville
Eleventh	*Robert K. Holliday (D)	Oak Hill
	Ralph D. Williams (D)	Rainelle
Twelfth	*Jae Spears (D)	Elkins
	Larry A. Tucker (D)	Summersville
Thirteenth	*Jean Scott Chace (D)	Weston
	Gino R. Colombo (D)	Clarksburg
Fourteenth	Stephen L. Cook (D)	Morgantown
	*James L. Davis (D)	Fairmont
Fifteenth	*Gerald W. Ash (D)	Terra Alta
	C. N. Harman (R)	Grafton
Sixteenth	Sandra Moore Lucht (D)	Martinsburg
	<sup>2</sup> Vernon C. Whitacre (D)	High View
Seventeenth	Darrell E. Holmes (D)	Charleston
	<sup>3</sup> Tod J. Kaufman (D)	Charleston

<sup>1</sup> Appointed a member of the Senate December 29, 1982, to fill the vacancy created by the resignation of the Honorable Patrick McCune.

<sup>2</sup> Appointed a member of the Senate December 15, 1982, to fill the vacancy created by the resignation of the Honorable Harley O. Sluggers, Jr.

<sup>3</sup> Appointed a member of the Senate December 10, 1982, to fill the vacancy created by the resignation of the Honorable Robert E. Wise, Jr.

\* Elected in 1980. All others elected in 1982.

(D) Democrats	31
(R) Republicans	3
Total	34

# STANDING COMMITTEES OF THE SENATE

Regular Session, 1984

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## Agriculture

Parker (Chairman), Lucht (Vice Chairman), Chace, Huffman, Rogers, Spears, Tucker, Whitacre and Jones.

## Banking and Insurance

Heck (Chairman), Tucker (Vice Chairman), Chafin, Craigo, Kaufman, Loehr, Palumbo, Rogers, Tomblin, Whitacre, Williams, Harman and White.

## Confirmations

Tomblin (Chairman), Kaufman (Vice Chairman), Ash, Burdette, Chace, Colombo, Davis, Loehr, Parker, Tonkovich, Tucker, Williams and Harman.

## Education

Holliday (Chairman), Heck (Vice Chairman), Ash, Boettner, Burdette, Chace, Colombo, Cook, Lucht, Nelson, Palumbo, Parker, Sacco, Stacy and Jones.

## Elections

Palumbo (Chairman), Rogers (Vice Chairman), Chafin, Chernenko, Colombo, Cook, Huffman, Kaufman, Parker, Sacco and White.

## Energy, Industry and Mining

Cook (Chairman), Stacy (Vice Chairman), Boettner, Burdette, Chafin, Chernenko, Davis, Heck, Holmes, Kaufman, Nelson, Harman and White.

## Finance

Nelson (Chairman), Loehr (Vice Chairman), Burdette, Chernenko, Colombo, Cook, Craigo, Holmes, Kaufman, Lucht, Parker, Spears, Tomblin, Tonkovich, Whitacre, Williams, Wright and Harman.

**Government Operations**

Stacy (Chairman), Loehr (Vice Chairman), Boettner, Cook, Craigo, Holliday, Lucht, Nelson and Jones.

**Health**

Chace (Chairman), Huffman (Vice Chairman), Ash, Boettner, Cook, Craigo, Davis, Holliday, Lucht, Spears, Stacy, Williams and Jones.

**Interstate Cooperation**

Davis (Chairman), Palumbo (Vice Chairman), Burdette, Huffman, Spears, Wright and Harman.

**Judiciary**

Boettner (Chairman), Chafin (Vice Chairman), Ash, Burdette, Chace, Craigo, Davis, Heck, Holliday, Huffman, Lucht, Palumbo, Rogers, Sacco, Stacy, Tucker, Jones and White.

**Labor**

Holmes (Chairman), Chernenko (Vice Chairman), Heck, Holliday, Huffman, Sacco, Stacy, Wright and Jones.

**Local Government**

Burdette (Chairman), Sacco (Vice Chairman), Chafin, Chernenko, Holmes, Huffman, Loehr, Williams and Harman.

**Military**

Spears (Chairman), Colombo (Vice Chairman), Chernenko, Heck, Palumbo, Rogers, Whitacre, Harman and White.

**Natural Resources**

Williams (Chairman), Craigo (Vice Chairman), Colombo, Cook, Holmes, Kaufman, Lucht, Palumbo, Parker, Rogers, Sacco, Tomblin, Tucker, Whitacre and Jones.

**Public Institutions**

Davis (Chairman), Ash (Vice Chairman), Chace, Holliday, Holmes, Spears, Stacy, Tomblin, Whitacre, Wright and Harman.

**Rules**

McGraw (Chairman), Boettner, Chace, Cook, Holliday, Nelson,, Palumbo, Tonkovich, Williams and Jones.

**Small Business**

Ash (Chairman), Wright (Vice Chairman), Burdette, Chernenko, Craigo, Lucht, Spears, Tucker and White.

**Transportation**

Craigo (Chairman), Whitacre (Vice Chairman), Chafin, Holmes, Huffman, Loehr, Parker, Rogers, Tomblin, Wright and White.

**JOINT COMMITTEES**

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**Enrolled Bills**

Davis (Chairman), Holmes (Vice Chairman), Ash, Colombo and Harman.

**Government and Finance**

McGraw (Cochairman), Boettner, Nelson, Tonkovich, Williams, Harman and Jones.

**Legislative Rule-Making Review**

McGraw (Chairman), Boettner, Lucht, Nelson, Williams, Harman and Jones.

**Rules**

McGraw (Chairman ex officio), Tonkovich and Harman.

**COMMISSION ON SPECIAL INVESTIGATIONS**

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

**STANDING COMMITTEES OF THE  
HOUSE OF DELEGATES**

**Regular Session, 1984**

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**Agriculture and Natural Resources**

Neal (Chairman of Agriculture), Burke (Vice Chairman), Ballouz (Chairman of Natural Resources), Steptoe (Vice Chairman), Artrip, Bailey, I. Damron, Doyle, Ferrell, Hutchinson, Jordan, Koury, Leary, Manchin, McCallister, Moore, Murphy, Sluss, Starcher, Stewart, Toler, Whitlow, Harman, Shaffer and Springston.

**Banking and Insurance**

Gilliam (Chairman of Banking), McCormick (Vice Chairman), Riffle (Chairman of Insurance), Goff (Vice Chairman), Anello, Bird, Blatnik, Crookshanks, C. Damron, Farley, Flanigan, Hamilton, Hartman, Love, Miller, Murensky, Roop, Schifano, Smith, Toney, F. Underwood, Williams, Faircloth, McKinley and Shanholtz.

**Constitutional Revision**

Wehrle (Chairman), Dalton (Vice Chairman), Brown, Casey, Chambers, Cipriani, C. Damron, Farley, Feinberg, Flanigan, Fulen, Hamilton, Hatcher, Humphreys, Johnson, Knight, Koury, Love, MacCorkle, E. Martin, J. Martin, Neal, Harman, Otte and Rogers.

**Education**

Sattes (Chairman), Hartman (Vice Chairman), Ashcraft, Bailey, Brown, Givens, Hagedorn, Johnson, Kidd, Koury, Lewis, McCallister, McCormick, Miller, Minard, Mullett, Murphy, Sergent, Spencer, Theiling, Toler, Yanni, Conley, Rogers and Shanholtz.

**Finance**

Polan (Chairman), Farley (Vice Chairman), Anello, Artrip, Blatnik, Bledsoe, Burke, Childers, Dalton, Goff, Hutchinson, Jordan, E. Martin, Murensky, Neal, Riffle, Seacrist, Simpkins, Smith, Starcher, Toney, Wehrle, Faircloth, Nicely and Teets.

### **Government Organization**

Wiedebusch (Chairman), Knight (Vice Chairman), Ashcraft, Ballouz, Crabtree, Decker, Doyle, Ferrell, Flanigan, Hamilton, Holt, Kelly, Leary, Love, Manchin, McCormick, Minard, Roop, Stewart, Theiling, F. Underwood, L. Underwood, Harman, McKinley and Otte.

### **Health and Welfare**

Givens (Chairman), Theiling (Vice Chairman), Artrip, Ballouz, Bird, Blatnik, Brown, Crookshanks, Davis, Flanigan, Goff, Hagedorn, Hartman, Kelly, Knight, Leary, Manchin, McCallister, Sergeant, Smith, Steptoe, Toney, Conley, Otte and Rogers.

### **Industry and Labor**

Starcher (Chairman), Moore (Vice Chairman), Ashcraft, Bledsoe, Crabtree, I. Damron, Davis, Fullen, Gilliam, Hatcher, Holt, Kidd, Lewis, Mullett, Murphy, Riffle, Simpkins, Sluss, Spencer, Stewart, Williams, Yanni, Carmichael, Nicely and Otte.

### **Interstate Cooperation**

Whitlow (Chairman), C. Damron, Gilliam, Neal, Otte and Rogers.

### **Judiciary**

Albright (Chairman), I. Damron, (Vice Chairman), Bird, Casey, Chambers, Cipriani, Crookshanks, Davis, Feinberg, Fullen, Gilliam, Hatcher, Humphreys, MacCorkle, J. Martin, Moore, Schifano, Sluss, Steptoe, Whitlow, Williams, Wooton, Carmichael, Shaffer and Springston.

### **Political Subdivisions**

J. Martin, (Chairman), Murensky (Vice Chairman), Bailey, Casey, Childers, Cipriani, Decker, Doyle, Humphreys, Hutchinson, Kelly, Kidd, MacCorkle, E. Martin, McCormick, Miller, Minard, Seacrist, Theiling, Toler, L. Underwood, Wooton, Carmichael, Harman and McKinley.

**Roads and Transportation**

Yanni (Chairman), Simpkins (Vice Chairman), Ashcraft, Bledsoe, Burke, Crabtree, Dalton, Decker, Feinberg, Ferrell, Hagedorn, Holt, Johnson, Jordan, Lewis, Mullett, Roop, Seacrist, Sergeant, Spencer, F. Underwood, L. Underwood, Conley, McKinley and Shanholtz.

**Rules**

See (Chairman), Albright, I. Damron, Polan, Sattes, Schifano, Shiflet, Wehrle, Wiedebusch, Wooton, Swann and Teets.

**JOINT COMMITTEES**  

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**Enrolled Bills**

Anello (Chairman), Childers (Vice Chairman), Hagedorn, Faircloth and Otte.

**Government and Finance**

See (Cochairman), Albright, Polan, Sattes, Shiflet, Swann and Teets.

**Legislative Rule-Making Review**

Chambers (Chairman), Schifano, Shiflet, Wiedebusch, Teets and Shaffer.

**Rules**

See (Chairman ex officio), Shiflet and Swann.

**COMMISSION ON SPECIAL INVESTIGATIONS**  

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See (Chairman), Hatcher, Wooton, Teets and Shaffer.



# LEGISLATURE OF WEST VIRGINIA

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## ACTS

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### REGULAR SESSION, 1984

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#### CHAPTER 1

(Com. Sub. for H. B. 1278—By Delegate Manchin and Delegate Smith)

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[Passed February 23, 1984; in effect ninety days from passage.  
Approved by the Governor.]

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AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-f, relating to the performing of abortion upon unemancipated minors generally and requiring parental notification prior to performing any such abortion; certain legislative findings and a statement of legislative intent with respect thereto; providing for the definition of certain terms used; requiring parental notification prior to performing abortion upon unemancipated minor in certain cases; the manner of and the time which such notification is to be given; providing for the waiver of such notification in certain cases; waiver of notification when any such minor objects to notification and certain procedures relating to such waiver; petition to the circuit court for such waiver; the contents of such petition; the duties of the attorney general and of the clerk of the circuit court with respect thereto; requiring that such petition and the proceedings held thereon and all records relating thereto are to be confidential; providing for the appointment of an attorney to represent the minors in certain cases; the payment of such attorney and limitation upon such payment; requiring that the hearing upon such petition be held without delay and for the speedy rendering and entry of judgment upon such petition; requiring a waiver to be issued by the court upon certain findings; establishing review procedures by the supreme court of ap-

peals or by any justice thereof; the effect of any court-ordered waiver of such notification; filing fees not required in any such court proceedings; providing that notification requirements are not required in certain cases of emergency; requiring that certain reports with respect to abortions performed upon unemancipated minors are to be filed with the department of health and the contents of such reports; clarifying that no physician or other person may be required to perform or assist in any abortion; providing criminal penalties for the violation of said article and for exceptions thereto in certain cases; and the severability of the provisions of said article.

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

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

**ARTICLE 2F. PARENTAL NOTIFICATION OF ABORTIONS PERFORMED ON UNEMANCIPATED MINORS.**

§16-2F-1. Legislative findings and intent.

§16-2F-2. Definitions.

§16-2F-3. Parental notification required for abortions performed on unemancipated minors; waiver; notice to minor of right of petition to circuit court; minor to be referred for counseling.

§16-2F-4. Waiver of notification; petition to circuit court; contents of petition; duties of attorney general and circuit clerk; confidentiality of proceedings; appointment of counsel and limitation of compensation; findings required to be made by court; petition to supreme court; waiver of certain fees.

§16-2F-5. Emergency exception from notification requirements.

§16-2F-6. Reporting requirements for physician.

§16-2F-7. Article not to be construed to require abortion.

§16-2F-8. Penalties.

§16-2F-9. Severability.

**§16-2F-1. Legislative findings and intent.**

1 The Legislature finds that immature minors often lack the  
 2 ability to make fully informed choices that take into account  
 3 both immediate and long-range consequences of their actions;  
 4 that the medical, emotional and psychological consequences  
 5 of abortion are serious and of indeterminate duration, partic-  
 6 ularly when the patient is immature; that in its current  
 7 abortion policy, as expressed in *Bellotti v. Baird*, 443 U.S. 622

8 (1979) and *H. L. v. Matheson*, 450 U.S. 398 (1981), the  
9 United States Supreme Court clearly relies on physicians'  
10 commitment to consider all factors, physical and otherwise,  
11 before performing abortions on minors; that parents ordinarily  
12 possess information essential to a physician's exercise of his  
13 best medical judgment concerning their child; and that par-  
14 ents who are aware that their minor daughter has had an  
15 abortion may better ensure that the minor receives adequate  
16 medical attention after her abortion. The Legislature further  
17 finds that parental consultation regarding abortion is usually  
18 desirable and in the best interest of the minor.

19 The Legislature further finds in accordance with the U.S.  
20 Supreme Court's decision in *Bellotti v. Baird*, 443 U.S.  
21 622 (1979), and *H. L. v. Matheson*, 450 U.S. 398 (1981),  
22 that there exists important and compelling state interests (i)  
23 in protecting minors against their own immaturity, (ii) in  
24 fostering the family structure and preserving it as a viable  
25 social unit, and (iii) in protecting the rights of parents to  
26 rear their own children in their own household.

27 It is, therefore, the intent of the Legislature to further  
28 these interests by enacting this parental notice provision.

#### §16-2F-2. Definitions.

1 For purposes of this article, unless the context in which  
2 used clearly requires otherwise:

3 (1) "Minor" means any person under the age of eighteen  
4 years who has not graduated from high school.

5 (2) "Unemancipated minor" means any minor who is  
6 neither married nor who has been emancipated pursuant to  
7 applicable federal law or as provided by section twenty-seven,  
8 article seven, chapter forty-nine of this code.

9 (3) "Actual notice" means the giving of notice directly, in  
10 person or by telephone.

11 (4) "Constructive notice" means the giving of notice by  
12 certified mail to the last known address of the parents or legal  
13 guardian, return receipt requested.

14 (5) "Abortion" means the use of any instrument, medicine,  
15 drug or any other substance or device with intent to terminate  
16 the pregnancy of a female known to be pregnant and with  
17 intent to cause the expulsion of a fetus other than by live  
18 birth: *Provided*, That nothing in this article shall be construed  
19 so as to prevent the prescription, sale or transfer of intrauterine  
20 contraceptive devices or other contraceptive devices or other  
21 generally medically accepted contraceptive devices, instru-  
22 ments, medicines or drugs for a female who is not known to be  
23 pregnant and for whom such contraceptive devices, instru-  
24 ments, medicines or drugs were prescribed by a physician  
25 solely for contraceptive purposes and not for the purpose of  
26 inducing or causing the termination of a known pregnancy.

**§16-2F-3. Parental notification required for abortions performed  
on unemancipated minors; waiver; notice to minor  
of right of petition to circuit court; minor to be re-  
ferred for counseling.**

1 (a) No physician may perform an abortion upon an un-  
2 emancipated minor unless such physician has given or caused  
3 to be given at least twenty-four hours actual notice to one of  
4 the parents or to the legal guardian of the pregnant minor of  
5 his intention to perform the abortion, or, if the parent or  
6 guardian cannot be found and notified after a reasonable effort  
7 so to do, without first having given at least forty-eight hours  
8 constructive notice computed from the time of mailing to the  
9 parent or to the legal guardian of the minor: *Provided*, That  
10 prior to giving the notification required by this section, the  
11 physician shall advise the unemancipated minor of the right of  
12 petition to the circuit court for waiver of notification: *Pro-*  
13 *vided, however*, That any such notification may be waived by  
14 a duly acknowledged writing signed by a parent or the guard-  
15 ian of the minor.

16 (b) Upon notification being given to any parent or to the  
17 legal guardian of such pregnant minor, the physician shall  
18 refer such pregnant minor to a counselor or caseworker of  
19 any church or school or of the department of human services  
20 or of any other comparable agency for the purpose of arrang-  
21 ing or accompanying such pregnant minor in consultation with

22 her parents. Such counselor shall thereafter be authorized to  
23 monitor the circumstances and the continued relationship of  
24 and between such minor and her parents.

25 (c) Parental notification required by subsection (a) of this  
26 section may be waived by a physician, other than the physician  
27 who is to perform the abortion, if such other physician finds  
28 that the minor is mature enough to make the abortion decision  
29 independently or that notification would not be in the minor's  
30 best interest: *Provided*, That such other physician shall not be  
31 associated professionally or financially with the physician pro-  
32 posing to perform the abortion.

**§16-2F-4. Waiver of notification; petition to circuit court; con-  
tents of petition; duties of attorney general and cir-  
cuit clerk; confidentiality of proceedings; appointment  
of counsel and limitation of compensation; findings  
required to be made by court; petition to supreme  
court; waiver of certain fees.**

1 (a) A minor who objects to such notice being given to  
2 her parent or legal guardian may petition for a waiver of  
3 such notice to the circuit court of the county in which the  
4 minor resides or in which the abortion is to be performed,  
5 or to the judge of either of such courts. Such minor may so  
6 petition and proceed in her own right or, at her option, by  
7 a next friend.

8 (b) Such petition need not be made in any specific form  
9 and shall be sufficient if it fairly sets forth the facts and  
10 circumstances of the matter, but shall contain the following  
11 information:

12 (i) The age of the petitioner and her educational level;

13 (ii) The county and state in which she resides; and

14 (iii) A brief statement of petitioner's reason or reasons for  
15 the desired waiver of notification of the parent or guardian  
16 of such minor petitioner.

17 No such petition shall be dismissed nor shall any hearing  
18 thereon be refused because of any defect in the form of the  
19 petition.

20 (c) Upon the effective date of this article or as soon  
21 thereafter as may be, the attorney general shall prepare  
22 suggested form petitions and accompanying instructions and  
23 shall make the same available to the several clerks of the  
24 circuit courts. Such clerks shall see that a sufficient number  
25 of such suggested form petitions and instructions are avail-  
26 able in the clerk's office for the use of any person desiring  
27 to use the same for the purposes of this section.

28 (d) All proceedings held pursuant to this article shall be  
29 confidential and the court shall conduct all such proceedings  
30 in camera. The court shall inform the minor petitioner of  
31 her right to be represented by counsel and that if she is  
32 without the requisite funds to retain the services of an at-  
33 torney, that the court will appoint an attorney to represent  
34 her interest in the matter. If the minor petitioner desires  
35 the services of an attorney, an attorney shall be appointed  
36 to represent such minor petitioner, if she advises the court  
37 under oath or affidavit that she is financially unable to retain  
38 counsel. Any attorney appointed to represent such minor peti-  
39 tioner shall be appointed and paid for his services pursuant  
40 to the provisions of article twenty-one, chapter twenty-nine  
41 of this code: *Provided*, That the pay to any such attorney  
42 pursuant to such appointment shall not exceed the sum of  
43 one hundred dollars.

44 (e) The court shall conduct a hearing upon the petition  
45 without delay, but in no event shall the delay exceed the next  
46 succeeding judicial day, and the court shall render its decision  
47 immediately upon its submission and, in any event, an order  
48 reflecting the findings of fact and conclusions of law reached  
49 by the court and its judgment shall be endorsed by the judge  
50 thereof not later than twenty-four hours following such sub-  
51 mission and shall be forthwith entered of record by the clerk  
52 of the court. All testimony, documents and other evidence  
53 presented to the court, as well as the petition and any orders  
54 entered thereon and all records of whatsoever nature and kind  
55 relating to the matter shall be sealed by the clerk and shall  
56 not be open to any person except upon order of the court  
57 and, then, only upon good cause being shown therefor. A  
58 separate order book for the purposes of this article shall be

59 maintained by such clerk and shall likewise be sealed and  
60 not open to inspection by any person save upon order of the  
61 court for good cause shown.

62 (f) Notice as required by section three of this article shall  
63 be ordered waived by the court if the court finds either:

64 (1) That the minor petitioner is mature and well informed  
65 sufficiently to make the decision to proceed with the abortion  
66 independently and without the notification or involvement  
67 of her parent or legal guardian, or

68 (2) That notification to the person or persons to whom  
69 such notification would otherwise be required would not be  
70 in the best interest of the minor petitioner.

71 (g) If or when the circuit court, or the judge thereof,  
72 shall refuse to order the waiver of the notification required  
73 by section three of this article, a copy of the petition and  
74 all orders entered in the matter and all other documents  
75 and papers submitted to the circuit court, may be presented  
76 to the supreme court of appeals, or to any justice thereof  
77 if such court then be in vacation, and such court or justice  
78 if deemed proper, may thereupon order the waiver of notifica-  
79 tion otherwise required by section three of this article. The  
80 supreme court of appeals or justice thereof shall hear and  
81 decide the matter without delay and shall enter such orders  
82 as such court or justice may deem appropriate.

83 (h) If either the circuit court or the supreme court of  
84 appeals, or any judge or justice thereof if either of such  
85 courts be then in vacation, shall order a waiver of the notifica-  
86 tion required by section three of this article, any physician  
87 to whom a certified copy of said order shall be presented may  
88 proceed to perform the abortion to the same extent as if  
89 such physician were in compliance with the provisions of said  
90 section three and, notwithstanding the fact that no notification  
91 is given to either the parent or legal guardian of any such  
92 unemancipated minor, any such physician shall not be subject  
93 to the penalty provisions which may be prescribed by this  
94 article for such failure of notification.

95 (i) No filing fees may be required of any minor who  
96 avails herself of any of the procedures provided by this section.

**§16-2F-5. Emergency exception from notification requirements.**

1 The notification requirements of section three of this article  
2 do not apply where there is an emergency need for an abortion  
3 to be performed if the continuation of the pregnancy consti-  
4 tutes an immediate threat and grave risk to the life or health  
5 of the pregnant minor and the attending physician so certifies  
6 in writing setting forth the nature of such threat or risk and  
7 the consequences which may be attendant to the continuation  
8 of the pregnancy. Such writing shall be maintained with the  
9 other medical records relating to such minor which are main-  
10 tained by the physician and the facility at which such abortion  
11 is performed.

**§16-2F-6. Reporting requirements for physician.**

1 Any physician performing an abortion upon an unemanci-  
2 pated minor shall provide the department of health a written  
3 report of the procedure within thirty days after having per-  
4 formed the abortion. The department of health shall provide  
5 reporting forms for this purpose to all physicians and health  
6 facilities required to be licensed pursuant to article five-b of  
7 this chapter. The following information, in addition to any  
8 other information which may be required by the department  
9 of health, regarding the minor receiving the abortion shall be  
10 included in such reporting form:

- 11 (1) Age;
- 12 (2) Educational level;
- 13 (3) Previous pregnancies;
- 14 (4) Previous live births;
- 15 (5) Previous abortions;
- 16 (6) Complications, if any, of the abortion being reported;
- 17 (7) Reason for waiver of notification of the minor's parent  
18 or guardian, if such notice was waived; and
- 19 (8) The city and county in which the abortion was per-  
20 formed.

21 Any such report shall not contain the name, address or



22 other information by which the minor receiving the abortion  
23 may be identified.

**§16-2F-7. Article not to be construed to require abortion.**

1 Nothing in this article, nor in any order issued pursuant  
2 thereto, shall require that a physician perform an abortion or  
3 that any person be required to assist in the performance of an  
4 abortion if such physician or person, for any reason, medical  
5 or otherwise, does not wish to perform or assist in such  
6 abortion.

**§16-2F-8. Penalties.**

1 Any person who knowingly performs an abortion upon an  
2 unemancipated minor in violation of this article or who know-  
3 ingly fails to conform to any requirement of this article shall  
4 be guilty of a misdemeanor, and, upon conviction thereof,  
5 shall be fined not less than five hundred dollars nor more  
6 than one thousand dollars or imprisoned in the county jail not  
7 more than thirty days, or both fined and imprisoned.

**§16-2F-9. Severability.**

1 The provisions of subsection (cc), section ten, article two,  
2 chapter two of this code shall apply to the provisions of this  
3 article to the same extent as if said subsection were set forth  
4 in extenso herein.

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## CHAPTER 2

(Com. Sub. for S. B. 63—By Senator Whitacre)

[Passed February 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-one-a, relating to the resolution of boundary disputes; providing a method of such resolution through the services of land surveyors or professional engineers; corrective deeds with respect thereto; and clarifying that

method of resolution is not exclusive remedy with respect to such disputes.

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

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

**ARTICLE 4. EJECTMENT.**

**§55-4-31a. Resolution of boundary disputes; corrective deeds; petition for ascertainment and designation of boundary line or lines of real estate.**

1 Where a survey has been made to establish the boundary  
2 to a parcel of land and there is a dispute between two or  
3 more owners of the land so surveyed as to the location of  
4 the boundary as located by such surveyor, the surveyor  
5 may make or cause to be made a review of the appropri-  
6 ate deeds of the parcels of land involved to determine the  
7 correct property description and location of the line.

8 If there is not sufficient evidence at the site of the par-  
9 cels involved to ascertain the true location of the bound-  
10 ary line, the parties to the dispute may secure the judg-  
11 ment and knowledge of another licensed land surveyor or  
12 surveyors or registered professional engineer or engineers  
13 as to the true location. If an agreement is reached be-  
14 tween all of the owners of the land involved in the dis-  
15 pute, then a straw deed or deed of correction shall be  
16 made, with the signatures of all parties affixed thereto.

17 If after the intervention of the additional surveyor or  
18 surveyors, engineer or engineers, there still exists a dis-  
19 pute as to the location of the boundary line, then any  
20 party may bring an action pursuant to section thirty-one  
21 of this article in the circuit court of the county where the  
22 land is located to ascertain the true location of the bound-  
23 ary line: *Provided*, That in any such action no party to  
24 such action shall be permitted to introduce into evidence  
25 any agreement with respect to the boundary dispute be-

26 tween two or more parties to the action if such agreement  
27 is not embodied in a corrective or straw deed executed  
28 by the parties.

29 Nothing in this section shall prevent or be deemed a  
30 condition precedent to the institution of an action under  
31 section thirty-one of this article.

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## CHAPTER 3

(Com. Sub. for H. B. 1220—By Delegate Albright and Delegate Feinberg)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article three, chapter forty-nine of said code, all relating to adoption procedures generally; defining terms; setting forth who may adopt; providing procedure for consent; when consent required; establishing that consent to adopt or relinquishment of parental rights authorizes person to consent to medical treatment of child; providing procedure for consent by infant; when consent or relinquishment may be revoked; exceptions; requirements of consent or relinquishment form; limiting fees to services rendered and requiring court approval of same; delivery of child for adoption; filing of petition; exception; order pendente lite; requirements of petition; providing for an appendix; establishing notice requirements; describing court procedures; recordation of order; prohibiting disclosure of the record except in certain instances; establishing when identifying and nonidentifying information may be disclosed; information forwarded to registrar of vital statistics; issuance of birth certificate; effect of order as to relations between parents and child as to rights of inheritance, including intestacy of adopted child; modifying certain terms to conform to new terminology; setting forth procedure for revocation of adoption; providing for the adoption of adults; jurisdiction of courts; prohibiting certain contractual agreements; providing procedure for consent

to adoption by child welfare agencies or the state department of human services; and establishing notice requirements when termination of parental rights are sought by such agency or department.

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

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

### **Chapter**

**48. Domestic Relations.**

**49. Child Welfare.**

## **CHAPTER 48. DOMESTIC RELATIONS.**

### **ARTICLE 4. ADOPTION.**

**§48-4-1. Definitions.**

**§48-4-2. Who may adopt.**

**§48-4-3. Consent.**

**§48-4-4. Consent by infants.**

**§48-4-5. Revocation of consent or relinquishment for adoption; when given; requirements; professional fees; itemization of fees.**

**§48-4-6. Delivery of child for adoption; filing of petition.**

**§48-4-7. Petition and appendix.**

**§48-4-8. Notice.**

**§48-4-9. Proceedings.**

**§48-4-10. Recordation of order; fees; disposition of records; names of adopting parents and persons previously entitled to parental rights not to be disclosed; disclosure of identifying and nonidentifying information; certificate for state registrar of vital statistics; birth certificate.**

**§48-4-11. Effect of order as to relations of parents and child and as to rights of inheritance; intestacy of adopted child.**

**§48-4-12. Revocation of adoption.**

**§48-4-13. Adoption of adults.**

**§48-4-14. Jurisdiction of courts.**

**§48-4-15. Contracts limiting or restraining adoptions.**

#### **§48-4-1. Definitions.**

1 As used in this article, unless the context otherwise re-  
2 quires:

3 (a) A "legal father" is, before adoption, the male person

4 having the legal relationship of parent to a child, (1) who  
5 is married to its mother at the time of conception; or (2) who  
6 is married to its mother at the time of birth of the child; or  
7 (3) who is the biological father of the child and who marries  
8 the mother before an adoption of the child.

9 (b) A "determined father" is, before adoption, a person  
10 (1) adjudicated to be the father of a child under the pro-  
11 visions of article seven of this chapter; or (2) who makes  
12 an affidavit stating that he is the father of a child and  
13 who is identified as the father by the mother in a like af-  
14 fidavit; or (3) who has, at his instance, been otherwise judi-  
15 cially determined to be the biological father of the child en-  
16 titled to parental rights with respect to the child.

17 (c) A "putative father" is, before adoption, a person  
18 (1) who is named by the mother as the biological father  
19 but who has not made any claim that he is the biological  
20 father of the child or that he is entitled to parental rights  
21 in any judicial proceeding to which the mother is or has been  
22 a party; or (2) who has made a claim in the adoption pro-  
23 ceeding or in a judicial proceeding pending at the time of  
24 the adoption proceeding that he is the biological father of  
25 a child, which claim has not been adjudicated adversely to  
26 his interest.

27 (d) An "unknown father" is the biological father who,  
28 before adoption, is neither the legal father, determined father  
29 nor putative father of the child.

30 (e) A "birth mother" is the biological mother of the  
31 child;

32 (f) A "birth father" is the biological father of the child;  
33 and

34 (g) The "adoptive parents" or "adoptive mother" or "adop-  
35 tive father" shall mean those persons who, after adoption, are  
36 the mother and father of the child.

#### §48-4-2. Who may adopt.

1 Any person not married or any person, with his or her  
2 spouse's consent, or any husband and wife jointly, may petition

3 a circuit court of the county wherein such person or persons  
4 reside for a decree of adoption of any minor child or person  
5 who may be adopted by the petitioner or petitioners under  
6 section thirteen of this article.

**§48-4-3. Consent.**

1 (a) The mother and legal father or determined father shall  
2 consent to the adoption by a writing acknowledged as in the  
3 case of deeds, unless the parental rights of such person have  
4 been previously terminated, abandoned or permanently relin-  
5 quished, or the person is under disability solely because of  
6 age. If the parental rights have been previously terminated,  
7 abandoned or permanently relinquished, the court shall so  
8 determine before awarding the decree of adoption. If the  
9 person is under disability, the court may decree the adoption  
10 if it determines (1) that the parental rights of the persons  
11 have been previously terminated, abandoned or permanently  
12 relinquished, (2) that the person is incurably insane, or (3)  
13 the disability arises solely because of age and an otherwise valid  
14 consent has been given.

15 (b) Any consent to adoption or relinquishment of parental  
16 rights shall authorize the prospective adopting party to consent  
17 to medical treatment of the child.

18 (c) If all persons entitled to parental rights of the child  
19 sought to be adopted are deceased or have been deprived of  
20 the custody of the person of such child by law, then and in  
21 such case, the written consent, acknowledged as aforesaid,  
22 of the legal guardian of such child or those having at the time  
23 the legal custody of the child shall be obtained and so pre-  
24 sented, and if there be no legal guardian nor any person having  
25 the legal custody of the child, then such consent must be ob-  
26 tained from some discreet and suitable person appointed by  
27 the court or judge thereof to act as the next friend of such  
28 child in the adoption proceedings.

29 (d) If one of the persons entitled to parental rights of  
30 the child sought to be adopted is deceased, only the consent  
31 or relinquishment of the surviving person entitled to parental  
32 rights shall be required.

**§48-4-4. Consent by Infants.**

1 A consent signed by a person less than eighteen years  
2 of age shall be specifically reviewed and approved by the  
3 court. If it appears that the person giving such consent is  
4 under eighteen years of age at the time of the filing of the  
5 petition, a guardian ad litem shall be appointed to assure that  
6 the interests of the infant be protected. The court may re-  
7 quire the infant to appear in camera, to satisfy the court of  
8 the propriety of the consent, or require a deposition to be  
9 taken, but neither shall be a prerequisite to a valid decree  
10 of adoption.

**§48-4-5. Revocation of consent or relinquishment for adoption;  
when given; requirements; professional fees; itemization  
of fees.**

1 (a) Parental consent or relinquishment of legal custody  
2 for adoption purposes, if given prior to the expiration of  
3 seventy-two hours after the birth of the child, may be revoked  
4 by such parent within ten days after the birth of the child.  
5 Except where a court of competent jurisdiction finds that  
6 such consent or relinquishment for adoption was obtained by  
7 fraud or duress, no consent or relinquishment of legal custody  
8 for adoption of a child, whether given by an adult or a minor,  
9 shall be revocable: *Provided*, That a relinquishment of legal  
10 custody for adoption of a child given by a minor to a licensed  
11 private child welfare agency or to the state department of  
12 human services shall be revocable unless the relinquishment  
13 was given in compliance with section one, article three,  
14 chapter forty-nine of the code: *Provided, however*, That the  
15 foregoing proviso shall not be construed as precluding a  
16 minor from consenting to the adoption of his or her child  
17 by an individual or individuals.

18 (b) No parental consent or relinquishment of legal custody  
19 for adoption purposes shall be valid unless it sets forth that  
20 the person executing the document has a legal right to revoke  
21 the same, and sets forth the method by which the same may  
22 be revoked, including the name and location of the person to  
23 contact in the event the person desires to exercise his or her  
24 right of revocation. Additionally, in the case of a birth

25 mother, no such consent or relinquishment shall be valid  
26 unless it sets forth that she has been informed of the avail-  
27 ability of counseling services with respect to her decision  
28 and that she has also been informed of the services and  
29 assistance available to her if she chooses to keep her child.

30 (c) Any payment to physicians, attorneys, adoption agen-  
31 cies or to any other person involved in the adoption process  
32 shall be limited to cover fees from services rendered and such  
33 fees shall be approved by the court.

**§48-4-6. Delivery of child for adoption; filing of petition.**

1 (a) Whenever a person delivers a child for adoption the  
2 person first receiving such child and the prospective adopt-  
3 ing parent or parents shall be entitled to receive from such  
4 person a written recital of all known circumstances surround-  
5 ing the birth, medical and family medical history of the  
6 child, and an itemization of any facts or circumstances un-  
7 known or requiring further development.

8 (b) The person or persons receiving a child for adoption  
9 shall, unless good cause is shown, immediately file a petition  
10 for adoption, with or without all requisite consents, and  
11 the court may, in its discretion, enter an order authorizing  
12 such petitioner or petitioners to assume all responsibility for  
13 the care, custody and control of such child, pendente lite, in-  
14 cluding the right to consent to medical treatment, which decree  
15 shall not be denied except for good cause set forth in the  
16 order.

**§48-4-7. Petition and appendix.**

1 (a) The petition shall set forth the name, age and place  
2 of residence of the petitioner or petitioners, and of the  
3 child, and the name by which the child shall be known;  
4 whether such child be possessed of any property and a full  
5 description of the same, if any; and whether the petitioner  
6 or petitioners know the identity of the persons entitled to  
7 parental rights or, that the same are unknown to the petitioner  
8 or petitioners. An effort shall be made to obtain medical and  
9 social information, and that information, along with all non-  
10 identifying information about the birth, shall accompany the



11 petition and be made a part of the nonidentifying information  
12 to be sealed in the court file. The petition shall be duly  
13 verified according to law.

14 (b) If the person petitioning for adoption is less than  
15 fifteen years older than the child sought to be adopted, such  
16 fact shall be set forth specifically in the petition. In such  
17 case, the court shall grant the adoption only upon a specific  
18 finding that notwithstanding the differences in age of the  
19 petitioner and child, such adoption is in the best interests of  
20 the child: *Provided*, That when the petitioner seeks to adopt  
21 a child of his or her spouse, such specific finding shall not be  
22 required and an adoption shall not be denied on the sole  
23 basis of proximity in age. In addition, the petition shall set  
24 forth such of the facts concerning the circumstances of the  
25 birth of the child as the petitioner or petitioners are in-  
26 formed. Either the petition, the various consents attached  
27 thereto or filed in the cause, or an appendix signed by counsel  
28 or other credible persons shall fully disclose all that is known  
29 about the parentage of the child.

**§48-4-8. Notice.**

1 (a) Unless waived by a writing acknowledged as in the  
2 case of deeds or by other proper means, notice of the adoption  
3 proceeding shall be served on any person entitled to parental  
4 rights of a child prior to its adoption who has not signed either  
5 a consent for the adoption of the child or a relinquishment of  
6 custody of such child, or whose parental rights have not  
7 otherwise been terminated.

8 In addition, notice shall be given to any putative or un-  
9 known father who has asserted or exercised parental rights  
10 and duties to and with such child and who has not consented  
11 or relinquished any parental rights and such rights have not  
12 otherwise been terminated, or who has not had reasonable  
13 opportunity before or after the birth of the child to assert or  
14 exercise such rights: *Provided*, That if such child is more  
15 than six months old at the time such notice would be re-  
16 quired and such father has not asserted or exercised his  
17 parental rights and he knew the whereabouts of the child,

18 then such father shall be presumed to have had reasonable op-  
19 portunity to assert or exercise such rights.

20 (b) Such notice shall be served on each such person  
21 at least twenty days before the date of the final hearing  
22 in the adoption proceeding and shall inform the person that  
23 his or her parental rights, if any, may be terminated in the  
24 proceeding and that such person may appear and defend any  
25 such rights within twenty days of such service. In the case of  
26 any such person who is a nonresident or whose whereabouts  
27 are unknown, service shall be achieved (1) by personal service,  
28 (2) by registered or certified mail, return receipt requested,  
29 postage prepaid, to the person's last-known address, with in-  
30 structions to forward, or (3) by publication. If personal service  
31 is not acquired, then if the person giving notice shall have any  
32 knowledge of the whereabouts of the person to be served, in-  
33 cluding a last-known address, service by mail shall be first  
34 attempted as herein provided. Any such service achieved by  
35 mail shall be complete upon mailing and shall be sufficient  
36 service without the need for notice by publication. In the  
37 event that no return receipt is received giving adequate evi-  
38 dence of receipt of the notice by the addressee or of receipt of  
39 the notice at the address to which the notice was mailed or  
40 forwarded, or if the whereabouts of the person are unknown,  
41 then the person required to give notice shall file with the court  
42 an affidavit setting forth the circumstances of any attempt to  
43 serve the notice by mail, and the diligent efforts to ascertain  
44 the whereabouts of the person to be served. If the court deter-  
45 mines that the whereabouts of the person to be served cannot  
46 be ascertained and that due diligence has been exercised to  
47 ascertain such person's whereabouts, then the court shall  
48 order service of such notice by publication as a Class II publi-  
49 cation in compliance with the provisions of article three, chap-  
50 ter fifty-nine of the code, and the publication area shall be  
51 the county where such proceedings are had, and in the county  
52 where the person to be served was last known to reside. The  
53 notice shall state the court and its address but not the names of  
54 the adopting parents. In the case of a person under disability,  
55 service shall be made on the person and his personal repre-  
56 sentative, or if there be none, on a guardian ad litem.

57 In the case of service by publication or mail or service on  
58 a personal representative or a guardian ad litem, the person  
59 shall be allowed thirty days from the date of the first publi-  
60 cation or mailing or such service on a personal representative  
61 or guardian ad litem in which to appear and defend such  
62 parental rights.

**§48-4-9. Proceedings.**

1 (a) When the cause has matured for hearing but not sooner  
2 than six months after the child has resided continuously in  
3 the home of the petitioner or petitioners, the court shall decree  
4 the adoption if:

5 (1) It determines that no person retains parental rights  
6 in such child except the petitioner and the petitioner's spouse,  
7 or the joint petitioners;

8 (2) That all applicable provisions of this article have been  
9 complied with;

10 (3) That the petitioner is or the petitioners are fit persons  
11 to adopt the child; and

12 (4) That it is in the best interests of the child to order  
13 such adoption.

14 (b) The court or judge thereof may adjourn the hearing  
15 of such petition or the examination of the parties in interest  
16 from time to time, as the nature of the case may require.  
17 Between the time of the filing of the petition for adoption  
18 and the hearing thereon, the court or judge thereof shall,  
19 unless the court or judge otherwise finds that one or more  
20 of the petitioners is related by blood or marriage to the  
21 child or to persons previously entitled to parental rights, and  
22 the court otherwise directs, cause a discreet inquiry to be  
23 made to determine whether such child is a proper subject  
24 for adoption and whether the home of the petitioner or  
25 petitioners is a suitable home for such child. Any such in-  
26 quiry, if directed, shall be made by any suitable and discreet  
27 person not related to either the persons previously entitled  
28 to parental rights or the adoptive parents, or by an agency  
29 designated by the court, or judge thereof, and the results  
30 thereof shall be submitted to the court or judge thereof

31 prior to or upon the hearing on the petition and shall be filed  
32 with the records of the proceeding and become a part thereof.  
33 The report shall include, but not be limited to, the follow-  
34 ing:

35 (1) A description of the family members, including medical  
36 and employment histories;

37 (2) A physical description of the home and surroundings;  
38 and

39 (3) A description of the adjustment of the child and family.

40 (c) If it shall be necessary, under the provisions of this  
41 article, that a discreet and suitable person shall be ap-  
42 pointed to act as the next friend of the child sought to  
43 be adopted, then and in that case the court or judge thereof  
44 shall order a notice of the petition and of the time and  
45 place when and where the appointment of next friend will be  
46 made, to be published as a Class II legal advertisement in  
47 compliance with the provisions of article three, chapter  
48 fifty-nine of this code, and the publication area for such  
49 publication shall be the county where such court is located.  
50 At the time and place so named and upon due proof of the  
51 publication of such notice, the court or judge thereof shall  
52 make such appointment, and shall thereupon assign a day for  
53 the hearing of such petition and the examination of the  
54 parties interested.

55 (d) Upon the day so assigned the court or judge thereof  
56 shall proceed to a final hearing of the petition and examina-  
57 tion of the parties in interest, under oath, and of such other  
58 witnesses as the court or judge thereof may deem necessary  
59 to develop fully the standing of the petitioners and their  
60 responsibility, and the status of the child sought to be adopted;  
61 and if the court or judge thereof shall be of the opinion from  
62 the testimony that the facts stated in the petition are true, and  
63 if upon examination the court or judge thereof is satisfied  
64 that the petitioner is, or the petitioners are, of good moral  
65 character, and of respectable standing in the community, and  
66 are able properly to maintain and educate the child sought  
67 to be adopted, and that the best interests of the child would  
68 be promoted by such adoption, then and in such case the

69 court or judge thereof shall make an order reciting the  
70 facts proved and the name by which the child shall thereafter  
71 be known, and declaring and adjudging that from the date of  
72 such order, the rights, duties, privileges and relations, there-  
73 tofore existing between the child and those persons previously  
74 entitled to parental rights, shall be in all respects at an  
75 end, and that the rights, duties, privileges and relations be-  
76 tween the child and his or her parent or parents by adoption  
77 shall thenceforth in all respects be the same, including the  
78 rights of inheritance, as if the child had been born to such  
79 adopting parent or parents in lawful wedlock, except only as  
80 otherwise provided in this article: *Provided*, That no such  
81 order shall disclose the names or addresses of those persons  
82 previously entitled to parental rights.

**§48-4-10. Recordation of order; fees; disposition of records; names of adopting parents and persons previously entitled to parental rights not to be disclosed; disclosure of identifying and nonidentifying information; certificate for state registrar of vital statistics; birth certificate.**

1 (a) The order of adoption shall be recorded in a book  
2 kept for that purpose, and the clerk shall receive the same fees  
3 as in other cases. All records of proceedings in adoption  
4 cases and all papers and records relating to such proceedings  
5 shall be kept in the office of the clerk of the circuit court  
6 in a sealed file, which file shall be kept in a locked or sealed  
7 cabinet, vault or other container and shall not be open to  
8 inspection or copy by anyone, except as otherwise provided in  
9 this article, or upon court order for good cause shown. No  
10 person in charge of adoption records shall disclose the names  
11 of the adopting parent or parents, the names of persons pre-  
12 viously entitled to parental rights, or the name of the adopted  
13 child, except as otherwise provided in this article, or upon  
14 court order for good cause shown. The clerk of the court  
15 keeping and maintaining the records in adoption cases shall  
16 keep and maintain an index of such cases separate and  
17 distinct from all other indices kept or maintained by him,  
18 and the index of adoption cases shall be kept in a locked  
19 or sealed cabinet, vault or other container and shall not be  
20 open to inspection or copy by anyone, except as otherwise

21 provided in this article, or upon court order for good cause  
22 shown. Nonidentifying information, such as a description of  
23 family members and medical histories, may be provided to the  
24 adoptive parents and the adopted child by submitting a duly  
25 acknowledged request to the clerk of the court. The clerk  
26 may charge the requesting party for copies of any documents,  
27 as provided in section eleven, article one, chapter fifty-nine of  
28 this code.

29 (b) Identifying information may only be obtained with  
30 the duly acknowledged consent of the mother or the legal or  
31 determined father who consented to the adoption or whose  
32 rights were otherwise relinquished or terminated, together  
33 with the duly acknowledged consent of the adopted child upon  
34 reaching majority, or upon court order for good cause shown.  
35 Such duly acknowledged consents may be filed with the  
36 clerk of the court, at any time after the adoption, authorizing  
37 release of identifying information. Any person previously  
38 entitled to parental rights may from time to time submit addi-  
39 tional social or medical information which, notwithstanding  
40 other provisions of this article, shall be inserted into the  
41 record by the clerk of the court.

42 (c) Immediately upon the entry of such order of adoption,  
43 the court shall direct the clerk thereof forthwith to make  
44 and deliver to the state registrar of vital statistics a certificate  
45 under the seal of said court, showing:

46 (1) The date and place of birth of the child, if known;

47 (2) The name of the mother of the child, if known, and  
48 the name of the legal or determined father of the child, if  
49 known;

50 (3) The name by which said child has previously been  
51 known;

52 (4) The names and addresses of the adopting parents;

53 (5) The name by which the child is to be thereafter  
54 known; and

55 (6) Such other information from the record of the adoption  
56 proceedings as may be required by the law governing vital

57 statistics and as may enable the state registrar of vital statistics  
58 to carry out the duties imposed upon him by this section.

59 (d) Upon receipt of the certificate, the registrar of vital  
60 statistics shall forthwith issue and deliver by mail to the  
61 adopting parents at their last-known address and to the clerk  
62 of the county commission of the county wherein such order of  
63 adoption was entered, a birth certificate in the form prescribed  
64 by law, except that the name of the child shown in said certifi-  
65 cate shall be the name given him by the order of adoption.  
66 The clerk shall record such birth certificate in the manner set  
67 forth in section twelve, article five, chapter sixteen of this  
68 code.

**§48-4-11. Effect of order as to relations of parents and child and  
as to rights of inheritance; intestacy of adopted child.**

1 (a) Upon the entry of such order of adoption, any person  
2 previously entitled to parental rights, any parent or parents  
3 by any previous legal adoption, and the lineal or collateral  
4 kindred of any such person, parent or parents, except any  
5 such person or parent who is the husband or wife of the  
6 petitioner for adoption, shall be divested of all legal rights,  
7 including the right of inheritance from or through the adopted  
8 child under the statutes of descent and distribution of this  
9 state, and shall be divested of all obligations in respect to the  
10 said adopted child, and the said adopted child shall be free  
11 from all legal obligations, including obedience and mainten-  
12 ance, in respect to any such person, parent or parents. From  
13 and after the entry of such order of adoption, the adopted  
14 child shall be, to all intents and for all purposes, the legitimate  
15 issue of the person or persons so adopting him or her and  
16 shall be entitled to all the rights and privileges and subject  
17 to all the obligations of a natural child of such adopting par-  
18 ent or parents.

19 (b) For the purpose of descent and distribution, from and  
20 after the entry of such order of adoption, a legally adopted  
21 child shall inherit from and through the parent or parents  
22 of such child by adoption and from or through the lineal or  
23 collateral kindred of such adopting parent or parents in the  
24 same manner and to the same extent as though said adopted

25 child were a natural child of such adopting parent or parents,  
26 but such child shall not inherit from any person entitled to  
27 parental rights prior to the adoption nor their lineal or col-  
28 lateral kindred, except that a child legally adopted by a  
29 husband or wife of a person entitled to parental rights prior  
30 to the adoption shall inherit from such person as well as from  
31 the adopting parent. If a legally adopted child shall die  
32 intestate, all property, including real and personal, of such  
33 adopted child shall pass, according to the statutes of descent  
34 and distribution of this state, to those persons who would  
35 have taken had the decedent been the natural child of the  
36 adopting parent or parents.

**§48-4-12. Revocation of adoption.**

1 (a) A mother, a legal or determined birth father, or a  
2 guardian of a child, who did not consent to the adoption of  
3 such child, or any person entitled to notice as provided in  
4 section eight of this article, or subsections (b) and (c),  
5 section one, article three, chapter forty-nine of this code,  
6 who was not served with notice as provided in said provisions,  
7 may, at any time within one year after learning of or having  
8 reasonable opportunity to learn of the adoption, apply by  
9 petition to the court in which the adoption was granted,  
10 praying that the adoption be vacated. The court to which  
11 such application is made shall fix a date and time for a hearing,  
12 shall cause notice thereof to be given to the person or per-  
13 sons or agency who were permitted to adopt such minor,  
14 and, at the time so fixed, shall hear the petitioner and all  
15 parties interested, and may vacate or affirm the adoption in  
16 its discretion. Any party interested may appeal to the supreme  
17 court of appeals from the decision of the court in the matter,  
18 as in other civil cases.

19 (b) When any minor has been adopted, he may, within  
20 one year after becoming of age, sign, seal and acknowledge  
21 before proper authority, in the county in which the order of  
22 adoption was made, a dissent from such adoption, and file  
23 such instrument of dissent in the office of the clerk of the  
24 court which granted said adoption and the clerk of the  
25 county commission of such county, and such clerks shall



26 record and index the same. Upon the filing of such instru-  
27 ment of dissent the adoption shall be vacated.

**§48-4-13. Adoption of adults.**

1 Any adult person who is a resident of West Virginia may  
2 petition the circuit court or any other court of record having  
3 jurisdiction of adoption proceedings for permission to adopt  
4 one who has reached the age of eighteen years or over,  
5 and, if desired, to change the name of such person. The  
6 consent of the person to be adopted shall be the only con-  
7 sent necessary. The order of adoption shall create the same  
8 relationship between the adopting parent or parents and the  
9 person adopted and the same rights of inheritance as in the  
10 case of an adopted minor child. If a change in name is de-  
11 sired, the adoption order shall so state.

**§48-4-14. Jurisdiction of courts.**

1 In counties where the circuit court does not sit as a juvenile  
2 court, concurrent jurisdiction in adoption proceedings is here-  
3 by extended to such juvenile courts.

**§48-4-15. Contracts limiting or restraining adoptions.**

1 Any contract, agreement or stipulation which endeavors  
2 to deny to any person or persons the right to petition for  
3 adoption of any person, or which endeavors to alter the time  
4 or manner of adoption as provided in this article, is con-  
5 trary to the public policy of the state and such portion of  
6 any contract, agreement or stipulation is null and void and  
7 of no effect.

**CHAPTER 49. CHILD WELFARE.**

**ARTICLE 3. CHILD WELFARE AGENCIES.**

**§49-3-1. Consent by agency or department to adoption of child;  
statement of relinquishment by parent; petition to ter-  
minate parental rights.**

1 (a) Whenever a child welfare agency licensed to place  
2 children for adoption or the state department of human  
3 services shall have been given the permanent care, custody  
4 and guardianship of any child and the rights of the mother

5 and the rights of the legal, determined, putative or unknown  
6 father of such child shall have been terminated by order of a  
7 court of competent jurisdiction or by a legally executed relin-  
8 quishment of parental rights, the child welfare agency or de-  
9 partment of human services may consent to the adoption of  
10 such child pursuant to the provisions of article four, chapter  
11 forty-eight of this code, regulating adoption proceedings. The  
12 mother and the legal or determined father of a child, or the  
13 mother if the father is putative or unknown, may relinquish the  
14 child to a child welfare agency licensed to place children for  
15 adoption, or to the department of human services, by a written  
16 statement acknowledged as deeds are required to be acknow-  
17 ledged by law: *Provided*, That if either of the parents of such  
18 child is under eighteen years of age, such relinquishment shall  
19 not be valid unless and until the same shall have been approved  
20 in writing by a judge of a court having jurisdiction of adop-  
21 tion proceedings in the county in which such parent may  
22 reside or in which such relinquishment is made.

23 (b) (1) Whenever the mother has executed a relinquish-  
24 ment pursuant to this section, and the legal, determined,  
25 putative or unknown father, as those terms are defined pur-  
26 suant to the provisions of section one, article four, chapter  
27 forty-eight of this code, has not executed a relinquishment,  
28 the child welfare agency or state department of human services  
29 may, by verified petition, seek to have said father's rights  
30 terminated based upon the grounds of abandonment or neglect  
31 of said child.

32 (2) Unless waived by a writing acknowledged as in the  
33 case of deeds or by other proper means, notice of the petition  
34 shall be served on any person entitled to parental rights  
35 of a child prior to its adoption who has not signed a relinquis-  
36 ment of custody of such child.

37 (3) In addition, notice shall be given to any putative or un-  
38 known father who has asserted or exercised parental rights and  
39 duties to and with such child and who has not consented or  
40 relinquished any parental rights and such rights have not  
41 otherwise been terminated, or who has not had reasonable  
42 opportunity before or after the birth of the child to assert  
43 or exercise such rights: *Provided*, That if such child is more

44 than six months old at the time such notice would be re-  
45 quired and such father has not asserted or exercised his parental  
46 rights and he knew the whereabouts of the child, then such  
47 father shall be presumed to have had reasonable opportunity  
48 to assert or exercise such rights.

49 (c) Upon the filing of the verified petition seeking to  
50 have the father's rights terminated, the court shall set a  
51 hearing on said petition. A copy of the petition and notice  
52 of the date, time and place of the hearing on said petition  
53 shall be personally served on him at least twenty days prior  
54 to the date set for the hearing.

55 Such notice shall inform the person that his parental rights,  
56 if any, may be terminated in the proceeding and that such  
57 person may appear and defend any such rights within twenty  
58 days of such service. In the case of any such person who is a  
59 nonresident or whose whereabouts are unknown, service shall  
60 be achieved (1) by personal service, (2) by registered or certi-  
61 fied mail, return receipt requested, postage prepaid, to the  
62 person's last-known address, with instructions to forward, or  
63 (3) by publication. If personal service is not acquired, then if  
64 the person giving notice shall have any knowledge of the  
65 whereabouts of the person to be served, including a last-known  
66 address, service by mail shall be first attempted as herein  
67 provided. Any such service achieved by mail shall be com-  
68 plete upon mailing and shall be sufficient service without the  
69 need for notice by publication. In the event that no return  
70 receipt is received giving adequate evidence of receipt of the  
71 notice by the addressee or of receipt of the notice at the address  
72 to which the notice was mailed or forwarded, or if the where-  
73 abouts of the person are unknown, then the person required to  
74 give notice shall file with the court an affidavit setting forth  
75 the circumstances of any attempt to serve the notice by mail,  
76 and the diligent efforts to ascertain the whereabouts of the  
77 person to be served. If the court determines that the where-  
78 abouts of the person to be served cannot be ascertained and  
79 that due diligence has been exercised to ascertain such person's  
80 whereabouts, then the court shall order service of such notice  
81 by publication as a Class II publication in compliance with  
82 the provisions of article three, chapter fifty-nine of the code,

83 and the publication area shall be the county where such pro-  
84 ceedings are had, and in the county where the person to be  
85 served was last known to reside. In the case of a person under  
86 disability, service shall be made on the person and his per-  
87 sonal representative, or if there be none, on a guardian ad  
88 litem.

89 In the case of service by publication or mail or service  
90 on a personal representative or a guardian ad litem, the person  
91 shall be allowed thirty days from the date of the first publi-  
92 cation or mailing of such service on a personal representative  
93 or guardian ad litem in which to appear and defend such  
94 parental rights.

95 (d) A petition under this section may be instituted in the  
96 county where the child resides or where the child is living.

97 (e) If the court finds that the person certified to parental  
98 rights is guilty of the allegations set forth in the petition,  
99 the court shall enter an order terminating his parental rights  
100 and shall award the full care, custody and control of said child  
101 to the petitioner.

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## CHAPTER 4

(H. B. 1218—By Delegate Knight and Delegate Faircloth)

[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to continuing and reestablishing the rural resource division of the department of agriculture.

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

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

**ARTICLE 1. DEPARTMENT OF AGRICULTURE.****§19-1-3a. Rural resource division continued and reestablished.**

1 After having conducted a performance and fiscal audit  
2 through its joint committee on government operations, pur-  
3 suant to section nine, article ten, chapter four of this code, the  
4 Legislature hereby finds and declares that the rural resource  
5 division of the department of agriculture should be continued  
6 and reestablished. Accordingly, notwithstanding the provi-  
7 sions of section four, article ten, chapter four of this code,  
8 the rural resource division of the department of agriculture  
9 shall continue to exist until the first day of July, one thousand  
10 nine hundred ninety.

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**CHAPTER 5****(H B. 2076—By Delegate Burke)**

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[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

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AN ACT to amend article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-b, relating to the department of agriculture; duties of commissioner; and authorizing the commissioner to increase certain fees by rules to a maximum.

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

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

**ARTICLE 1. DEPARTMENT OF AGRICULTURE.****§19-1-4b. Authority of commissioner to increase certain fees by rule or regulations.**

1 The commissioner is hereby authorized to promulgate and

2 adopt rules and regulations, in accordance with the  
3 provisions of chapter twenty-nine-a of this code, fixing  
4 dues for permits, licenses, certificates, registrations and lab-  
5 oratory tests when, in the opinion of the commissioner, it  
6 becomes necessary to increase these fees in order to cover the  
7 costs of providing the services involved or issuing the permits,  
8 licenses, certificates or registrations applicable: *Provided*, That  
9 this authority is granted only with regard to the following sec-  
10 tions and articles of this chapter and may be exercised by the  
11 commissioner up to a maximum extent of causing all such  
12 fees, as the same exists on the first day of January, one thou-  
13 sand nine hundred eighty-four, to be doubled:

14 Section six, article two-a (permits for public markets),  
15 section ten, article two-a (licensing of weighmen and auction-  
16 eers); section eleven, article two-a (grading, classifying or  
17 standardizing license); section fourteen, article two-a (testing  
18 and inspection of livestock for infectious disease); section four,  
19 article two-b (license for commercial slaughterer, etc.); section  
20 six, article two-c (auctioneer license); section one, article three  
21 (commission merchant license); section four, article five-a  
22 (warehouse operation license); section two, article nine-a (per-  
23 mit to feed garbage to swine); section three, article ten-a  
24 (certificate to sell eggs); section five, article eleven (permit  
25 to manufacture or purchase milk and cream); section nine,  
26 article twelve (certificate of nurserymen, etc.); section six,  
27 article fourteen (fees for feed inspection); section two, article  
28 fifteen (registration fee for commercial fertilizer); section  
29 four, article fifteen (inspection fees for commercial fertilizers);  
30 section two, article fifteen-a (registration of agricultural liming  
31 material); section four, article fifteen-a (inspection fee for  
32 liming material); and section three, article sixteen (fees for  
33 sale of seeds).

34 Any money collected by the commissioner as a result of  
35 any fee increases pursuant to rule or regulation authorized  
36 by this section shall be deposited in the same fund or funds  
37 with the state treasurer and expended in the same manner as  
38 those fees collected prior to the enactment of this section.

## CHAPTER 6

(H. B. 1271—By Delegate Faircloth and Delegate Wiedebusch)

[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the meat inspection program of the department of agriculture.

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

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

### **ARTICLE 2B. INSPECTION OF ANIMALS, MEAT AND MEAT PRODUCTS.**

#### **§19-2B-1. Purpose and construction; continuation of meat inspection program.**

1 Subject to the provisions of subsection (a), section  
2 seven hereof, the basic purpose of this article is to pro-  
3 vide for the inspection, labeling and disposition of animals,  
4 carcasses, meat, meat food products and meat by-products  
5 which are to be sold or offered for sale through commercial  
6 outlets for human consumption, the licensing of commercial  
7 slaughterers, custom slaughterers and processors, and the  
8 inspection of slaughterhouses and processing plants located  
9 in the state of West Virginia. This article, being intended to  
10 protect the health of the citizens of West Virginia, shall be  
11 liberally construed.

12 After having conducted a performance and fiscal audit  
13 through its joint committee on government operations, pur-  
14 suant to section nine, article ten, chapter four of this code,  
15 the Legislature hereby finds and declares that the meat  
16 inspection program should be continued and reestablished.  
17 Accordingly, notwithstanding the provisions of section four,  
18 article ten, chapter four of this code, the meat inspection pro-  
19 gram shall continue to exist until the first day of July, one  
20 thousand nine hundred ninety.

## CHAPTER 7

(Com. Sub. for H. B. 1003—By Delegate Steptoe)

[Passed February 23, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-g, relating to providing a short title for the article and declaring its purpose; defining certain terms; providing for authorization of the tree fruit industry self-improvement assessment board by referendum; providing for conducting the referendum and announcing the results; providing for termination of the program by referendum; creating the tree fruit industry self-improvement assessment board to administer the program; requiring the board to annually report on its activities to the Legislature; authorizing the board to promulgate necessary rules and regulations; providing for assessments on tree fruit sales and for refunds of assessments to producers who demand them in writing; providing penalties for failure to collect or remit assessments; providing for the severability of provisions of this article; and providing for termination of the program if it is not reviewed and continued by the Legislature.

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

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

### **ARTICLE 2G. TREE FRUIT INDUSTRY SELF-IMPROVEMENT ASSESSMENT PROGRAM.**

- §19-2G-1. Short Title.
- §19-2G-2. Purpose.
- §19-2G-3. Definitions.
- §19-2G-4. Authorization of program by referendum.
- §19-2G-5. Termination of program by referendum.
- §19-2G-6. Tree fruit industry self-improvement assessment board; administration of program; report to Legislature; rules and regulations.
- §19-2G-7. Assessment on sales; reimbursement for collecting.
- §19-2G-8. Refunds.



§19-2G-9. Penalties.

§19-2G-10. Termination of program by law.

**§19-2G-1. Short Title.**

- 1 This article shall be known and may be cited as the Tree
- 2 Fruit Industry Self-Improvement Act of 1984.

**§19-2G-2. Purpose.**

- 1 The purpose of this article is to enhance and promote sales
- 2 of tree fruits in the state and thereby enhance the profit po-
- 3 tential of the state's tree fruit industry. This article furthers
- 4 that purpose by providing support for efforts to solve prob-
- 5 lems in tree fruit crop health, production and marketing; by
- 6 providing support for research and education activities related
- 7 to the production and marketing of tree fruits and by inform-
- 8 ing and educating the public concerning the value and bene-
- 9 fits of tree fruits or products made from tree fruits.

**§19-2G-3. Definitions.**

- 1 As used in this article the following terms shall have these
- 2 meanings, unless the text clearly specifies otherwise:

- 3 (a) "Tree fruit industry self-improvement assessment
- 4 board" or "board" means those persons appointed by the
- 5 governor in the manner provided for in section six of this
- 6 article;

- 7 (b) "Commissioner" means the commissioner of agricul-
- 8 ture of the state of West Virginia and his duly authorized agent
- 9 or agents;

- 10 (c) "Person" means any individual, partnership, corpora-
- 11 tion, association, fiduciary or other group of persons whether
- 12 organized or not;

- 13 (d) "Producer" means any person in the business of pro-
- 14 ducing tree fruits for direct sale to consumers or for sale
- 15 to processors for ultimate sale as tree fruit products; and

- 16 (e) "Tree fruit industry self-improvement assessment pro-
- 17 gram" or "program" means those activities of the board de-
- 18 signed to promote the state's tree fruit industry including, but
- 19 not limited to, receiving and disbursing assessment funds, ac-

20 cepting gifts and grants from any private source, supporting  
21 tree fruit research, developing production and marketing  
22 practices, and sponsoring industry and public education efforts.

**§19-2G-4. Authorization of program by referendum.**

1 (a) The provisions of sections six, seven, eight, nine and ten  
2 of this article shall not be implemented until sixty days after  
3 passage of a referendum creating a board. A referendum shall  
4 be passed when voted for by a majority of the tree fruit pro-  
5 ducers participating in the referendum. If any such referendum  
6 is proposed and defeated, no subsequent referendum may be  
7 held for at least two years following the date the initial refer-  
8 endum was defeated.

9 (b) Upon receipt of a petition signed by not less than fifty  
10 producers, the commissioner shall call a public hearing in ac-  
11 cordance with the provisions of chapter twenty-nine-a of this  
12 code. The subject of this hearing shall be whether a referendum  
13 should be held and the amount of the proposed assessment. If  
14 a majority of those producers present at the hearing are in favor  
15 of the referendum and agree on a proposed assessment, the  
16 commissioner shall notify producers of the date of the pending  
17 referendum by publishing a notice on not less than three differ-  
18 ent days in not less than two newspapers of general circulation  
19 in the state. The commissioner shall also publish notice of the  
20 pending referendum in such other places and in such other  
21 manner as he considers necessary.

22 (c) Producers shall vote at polling places designated by  
23 the commissioner and provided in each county for that pur-  
24 pose on ballots designed and furnished by the commissioner.  
25 Ballots shall be furnished to producers for voting upon their  
26 presentation of proof, such as tax assessment records, sales  
27 receipts or income tax records, demonstrating that they are  
28 bona fide producers as defined in section three of this article.  
29 Records, receipts or other proof presented may be no more  
30 than one year old. The commissioner shall announce the re-  
31 sults of the referendum in not less than two newspapers of  
32 general circulation in the state within seventy-two hours after  
33 the polling places for the referendum are closed and shall  
34 preserve all ballots for a period of one year after the referen-  
35 dum is held.

**§19-2G-5. Termination of program by referendum.**

1 The commissioner shall provide for a referendum on con-  
2 tinuation or cessation of the board within sixty days after  
3 receiving a petition in writing signed by not less than thirty  
4 producers requesting that the board be terminated. The  
5 commissioner shall notify producers of the date of the pend-  
6 ing referendum by publishing a notice on not less than three  
7 different days in not less than two newspapers of general cir-  
8 culation in the state. The commissioner shall also publish  
9 notice of the pending referendum in such other places and in  
10 such other manner as he considers necessary. Any referendum  
11 held pursuant to this section five shall be conducted by the  
12 commissioner as set forth in section (four) of this article. If  
13 a majority of producers voting in the referendum vote for  
14 continuation of the board the board shall be continued.  
15 If less than a majority of the producers voting in the referen-  
16 dum vote for continuation of the board the board shall  
17 be terminated ninety days after the date of the referendum.  
18 If such referendum is held and if as a result of that referen-  
19 dum the program is continued, no subsequent referendum may  
20 be held within two years after the referendum. Unencumbered  
21 money left in the fund upon termination of the program shall  
22 be deposited in the general fund of the state of West Virginia.

**§19-2G-6. Tree Fruit industry self-improvement assessment board;  
administration of program; report to Legislature; rules  
and regulations.**

1 (a) There is hereby created a West Virginia tree fruit  
2 improvement assessment board consisting of nine persons who  
3 are residents of the state and citizens of the United States and  
4 who are and have been actually engaged in the industry of  
5 producing tree fruits for the preceding five years. The nine  
6 persons who shall serve as members of the board shall be  
7 appointed by the governor for terms of three years and may  
8 serve successive terms: *Provided*, That the initial appoint-  
9 ments of members of the board shall be three members to  
10 serve for terms of one year each, three members to serve  
11 for terms of two years each and three members to serve for  
12 terms of three years each.

13 (b) The governor shall make appointments to fill any vacan-  
14 cies which may occur on the board and these appointments  
15 shall be only for the unexpired term of the position on the  
16 board. In making appointments to the board, the governor shall  
17 consider the recommendations made by organizations and  
18 groups in West Virginia which are concerned with or engaged  
19 in the production of tree fruits for the purpose of marketing  
20 tree fruits to consumers or processors. If the governor fails  
21 to make an appointment within ninety days after the expiration  
22 of any term or within ninety days after a vacancy occurs, the  
23 board shall, with the concurrence of a majority of the mem-  
24 bers still serving, make the necessary appointment. Each  
25 member shall hold office until the expiration of his term or  
26 until a successor is duly appointed and qualified.

27 (c) The board shall elect a chairman, a secretary and a  
28 treasurer from its membership and shall meet at such times and  
29 places as designated by call of the chairman or by a majority of  
30 the board. All board meetings shall be held in accordance with  
31 the state open meetings law. A stipend shall be paid to each  
32 member from board collections not to exceed thirty-five dol-  
33 lars per meeting for each meeting actually attended, and each  
34 member shall be reimbursed for his actual expenses incurred  
35 with respect to each meeting for room, meals and mileage in  
36 the same amount as is provided for by the rules and regula-  
37 tions promulgated by the governor for reimbursing state of-  
38 ficials and employees of the state. No board member may  
39 receive any other salary or compensation for his services.

40 (d) The board may contract for services, employ and dis-  
41 charge employees, provide for such facilities and equipment as  
42 are necessary for the employees to perform their duties and may  
43 cooperate with other state or federal agencies or other organ-  
44 izations whose activities may be beneficial to the purposes  
45 of this article. The board may not expend funds to influence  
46 legislation or for any political campaign.

47 (e) The board shall administer the tree fruit self-improve-  
48 ment assessment program. All such activity shall be directed  
49 toward increasing the sale of tree fruits produced in the state  
50 without reference to any particular firm, individual, brand  
51 or trade name.

52 (f) The board shall submit a report, including a complete  
53 fiscal accounting of its activities, to the Legislature not later  
54 than the fifteenth day of January of each year.

55 (g) The board may promulgate such rules and regulations  
56 as the board considers necessary to carry out the purposes  
57 of this article after a public hearing following due notice to  
58 all interested persons and compliance with the provisions of  
59 the state administrative procedures set forth in chapter twenty-  
60 nine-a of this code.

**§19-2G-7. Assessment on sales; reimbursement for collecting.**

1 (a) All tree fruit markets, packers, processors, wholesalers,  
2 dealers and other persons, excluding persons purchasing tree  
3 fruits for their personal consumption or use, purchasing tree  
4 fruits, including direct shipments from producers, shall deduct  
5 the assessments stipulated in the authorizing referendum, pro-  
6 vided for in section four of this article, from the settlement for  
7 such tree fruit and to forward it within thirty days to the  
8 treasurer of the board. Five percent of the funds so collected  
9 shall be retained by the person remitting the funds as reim-  
10 bursement for additional problems and costs.

11 (b) The board shall keep accurate records of the amounts  
12 of assessments and the dates on which they are received, and  
13 of the expenditures of funds and the dates on which they are  
14 made. These records shall be preserved for at least five years.

**§19-2G-8. Refunds.**

1 Any producer of tree fruits from whom an assessment  
2 has been collected may demand and receive a refund of the  
3 total amount of the assessment. The demand for a refund  
4 must be made in writing to the board within thirty days of  
5 the assessment and shall contain the name and address of  
6 the producer, the amount of the assessment, the name and  
7 address of the collecting agent, the date of sale and the invoice  
8 number. The board or its administrative staff, upon deter-  
9 mining that the assessment was paid by the producer, shall  
10 make the refund.

**§19-2G-9. Penalties.**

1 When a person who should collect the assessment as

2 provided in section seven of this article fails to do so or  
3 fails to forward it to the treasurer of the board within thirty  
4 days, the board shall certify that fact to the commissioner.  
5 The commissioner shall write to the person informing him that  
6 he has fifteen days to begin the collection or forwarding of  
7 the assessment. The person may submit to the board a written  
8 justification for nonpayment and upon receiving the justifica-  
9 tion, the board may extend the allowable payment period. If  
10 payment is not made within the fifteen-day period or any  
11 extension thereof approved by the board, the commissioner  
12 shall revoke any license or permit the person may have to  
13 engage in the purchase or sale of agricultural products for  
14 resale in the state. Any person whose license or permit is  
15 revoked as provided for under this section shall not be eligible  
16 for relicensing or for reissuance of his permit for a period  
17 of three years.

**§19-2G-10. Termination of program by law.**

1 This program shall be terminated on the first day of July,  
2 one thousand nine hundred eighty-nine, unless a review of  
3 the program's functions is undertaken, pursuant to sections  
4 nine, ten and eleven, article ten, chapter four of this code.

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## CHAPTER 8

(H. B. 1041—By Delegate Steptoe)

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[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

**AN ACT** to amend and reenact section nine-a, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the impounding of dogs, cats and other domesticated animals for rabies observation; confinement and quarantine; duty of officer or warden; penalties.

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

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

**ARTICLE 20. DOGS.****§19-20-9a. Dogs, cats, etc.; rabies observation.**

1 Any person who owns or harbors any dog, cat or other  
2 domesticated animal, whether licensed or unlicensed, which  
3 bites any person, shall forthwith confine and quarantine the  
4 animal for a period of fourteen days for rabies observation. If  
5 such animal is not so confined and quarantined, the humane  
6 officer, dog warden or sheriff may cause such animal to be  
7 placed in the custody and care of a licensed veterinarian for  
8 such purpose at the owner's expense. The penalty for any  
9 violation of this section shall be a fine of fifty dollars or con-  
10 finement in the county jail for a period of no less than two nor  
11 more than three days.

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**CHAPTER 9**

(Com. Sub. for S. B. 154—By Senator Lucht)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to dogs, cats or other pets; establishing the protection by law of such dogs, cats or other pets; providing for the crimes of killing, injuring, poisoning or stealing such pets; setting forth criminal penalties; creating a right of action against a person who kills or injures such pets; limiting the recovery in any such action in the case of a dog to the assessed value of such dog; providing that no action or prosecution may be maintained in the case of a dog unless such dog shall have been duly registered; authorizing the commissioner of agriculture to designate certain employees to investigate certain activities; requiring that the results of any such investigations be made available to the appropriate law-enforcement officers; providing for the enforcement of this article by certain law-enforcement officers; permitting such officers to charge fees for services ren-

dered; and providing that such fees shall be paid from the county's dog and kennel fund.

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

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

**ARTICLE 20. DOGS.**

**§19-20-12. Dogs, other animals and reptiles protected by law; unlawful killing thereof; aggrieved owner's remedy; penalties; penalties for unlawful stealing of pets.**

1 (a) Any dog which is registered, kept and controlled  
2 as provided in this article or any dog, cat, other animal  
3 or any reptile which is owned, kept and maintained as a  
4 pet by any person, irrespective of age, shall be protected  
5 by law; and any person who shall intentionally and un-  
6 lawfully kill, injure or poison any such dog, cat, other  
7 animal or any reptile as specified above, or shall, in any  
8 other manner, intentionally and unlawfully cause the  
9 death or injury of any such dog, cat, other animal or any  
10 reptile shall be guilty of a misdemeanor, and, upon con-  
11 viction thereof, shall be ordered to provide public service  
12 for not less than thirty nor more than ninety days, or  
13 fined not more than three hundred dollars, or both. Any  
14 person whose dog, cat, other animal or reptile as specified  
15 herein shall be killed or injured wrongfully or unlawfully  
16 by any other person shall have a right of action against  
17 the person who shall so kill or injure such dog, cat, ani-  
18 mal or reptile but in no case involving a dog can recovery  
19 be had in excess of the assessed value of such dog.

20 (b) Any person who shall intentionally and unlawfully  
21 steal a dog, cat, other animal or reptile as specified in  
22 subsection (a) of this section, shall be guilty of a misde-  
23 meanor, and, upon conviction thereof, shall be ordered to  
24 provide public service for not less than thirty nor more  
25 than ninety days or fined not less than three hundred  
26 nor more than five hundred dollars, or both. Any per-  
27 son violatin the provisions of this subsection shall for



28 the second or subsequent offense, be guilty of a mis-  
29 demeanor, and, upon conviction thereof, shall be con-  
30 fined in the county jail for a period of not less than ninety  
31 days nor more than six months, or shall be ordered to  
32 provide public service for not more than one year, and  
33 fined not less than five hundred nor more than one thou-  
34 sand dollars. In no case can any action or prosecution  
35 relating to a dog under the provisions of this section be  
36 maintained if the dog concerned shall not have been duly  
37 registered pursuant to the provisions of this article or  
38 owned and kept pursuant to the provisions of this section  
39 or owned and kept pursuant to the provisions of this  
40 section at the time the cause of action shall have arisen.

41 (c) The commissioner of agriculture is hereby autho-  
42 rized to designate such reasonable number of his present  
43 employees as may be necessary to investigate alleged in-  
44 cidents of the unlawful stealing of dogs, other domestic  
45 animals or reptiles, alleged incidents of cruelty to such  
46 animals or reptiles and the alleged incidents of the un-  
47 lawful stealing of such animals or reptiles for the purpose  
48 of sale to medical or other research companies. Such  
49 deputies shall make the results of their investigations  
50 known to any law-enforcement officers who have author-  
51 ity to enforce the provisions of this article.

52 (d) It shall be the duty of all members of the depart-  
53 ment of public safety, sheriffs and police officers to aid  
54 in the enforcement of the provisions of this article, and,  
55 for services rendered in the enforcement thereof, such  
56 persons shall be entitled to fees in the amounts set forth  
57 in section eight. Such fees shall be paid by the county  
58 commission from the dog and kennel fund.

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## CHAPTER 10

(H. B. 1221—By Delegate Knight and Delegate Faircloth)

[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-one-a,  
chapter nineteen of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to continuing and reestablishing the state soil conservation committee.

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

That section four, article twenty-one-a, 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 21A. SOIL CONSERVATION DISTRICTS.**

**§19-21A-4. State soil conservation committee.**

1 (a) There is hereby established, to serve as an agency  
2 of the state and to perform the functions conferred upon it  
3 in this article, the state soil conservation committee. The  
4 committee shall consist of seven members. The following  
5 shall serve, ex officio, as members of the committee: The  
6 director of the state cooperative extension service; the direc-  
7 tor of the state agricultural experiment station; the director  
8 of the department of natural resources; and the state com-  
9 missioner of agriculture, who shall be chairman of the com-  
10 mittee.

11 The governor shall appoint as additional members of the  
12 committee three representative citizens. The term of mem-  
13 bers thus appointed shall be four years, except that of the  
14 first members so appointed, one shall be appointed for a  
15 term of two years, one for a term of three years and one  
16 for a term of four years. In the event of a vacancy, ap-  
17 pointment shall be for the unexpired term.

18 The committee may invite the secretary of agriculture of  
19 the United States of America to appoint one person to serve  
20 with the committee as an advisory member.

21 The committee shall keep a record of its official actions,  
22 shall adopt a seal, which seal shall be judicially noticed,  
23 and may perform such acts, hold such public hearings and  
24 promulgate such rules and regulations as may be necessary  
25 for the execution of its functions under this article.

26 (b) The state soil conservation committee may employ an  
27 administrative officer and such technical experts and such  
28 other agents and employees, permanent and temporary, as it

29 may require, and shall determine their qualifications, duties  
30 and compensation. The committee may call upon the at-  
31 torney general of the state for such legal services as it  
32 may require. It shall have authority to delegate to its  
33 chairman, to one or more of its members, or to one or more  
34 agents or employees, such powers and duties as it may deem  
35 proper. The committee is empowered to secure necessary and  
36 suitable office accommodations, and the necessary supplies  
37 and equipment. Upon request of the committee, for the  
38 purpose of carrying out any of its functions, the super-  
39 vising officer of any state agency, or of any state institu-  
40 tion of learning shall, insofar as may be possible, under  
41 available appropriations, and having due regard to the needs  
42 of the agency to which the request is directed, assign or  
43 detail to the committee, members of the staff or personnel  
44 of such agency or institution of learning, and make such  
45 special reports, surveys or studies as the committee may  
46 request.

47 (c) A member of the committee shall hold office so long  
48 as he shall retain the office by virtue of which he shall be  
49 serving on the committee. A majority of the committee shall  
50 constitute a quorum, and the concurrence of a majority in  
51 any matter within their duties shall be required for its  
52 determination. The chairman and members of the committee  
53 shall receive no compensation for their services on the  
54 committee, but shall be entitled to expenses, including trav-  
55 eling expenses, necessarily incurred in the discharge of  
56 their duties on the committee. The committee shall provide  
57 for the execution of surety bonds for all employees and of-  
58 ficers who shall be entrusted with funds or property; shall  
59 provide for the keeping of a full and accurate public record  
60 of all proceedings and of all resolutions, regulations and  
61 orders issued or adopted; and shall provide for an an-  
62 nual audit of the accounts of receipts and disbursements.

63 (d) In addition to the duties and powers hereinafter  
64 conferred upon the state soil conservation committee, it  
65 shall have the following duties and powers:

66 (1) To offer such assistance as may be appropriate to  
67 the supervisors of soil conservation districts, organized as

68 provided hereinafter, in the carrying out of any of their powers  
69 and programs;

70 (2) To keep the supervisors of each of the several dis-  
71 tricts, organized under the provisions of this article, in-  
72 formed of the activities and experience of all other districts  
73 organized hereunder, and to facilitate an interchange of advice  
74 and experience between such districts and cooperation be-  
75 tween them;

76 (3) To coordinate the programs of the several soil con-  
77 servation districts organized hereunder so far as this may  
78 be done by advice and consultation;

79 (4) To secure the cooperation and assistance of the  
80 United States and any of its agencies, and of agencies of  
81 this state, in the work of such districts;

82 (5) To disseminate information throughout the state con-  
83 cerning the activities and programs of the soil conservation  
84 districts organized hereunder, and to encourage the forma-  
85 tion of such districts in areas where their organization is de-  
86 sirable;

87 (6) To accept and receive donations, gifts, contribu-  
88 tions, grants and appropriations in money, services, materials  
89 or otherwise, from the United States or any of its agencies,  
90 from the state of West Virginia, or from other sources,  
91 and to use or expend such money, services, materials or  
92 other contributions in carrying out the policy and provisions  
93 of this article, including the right to allocate such money,  
94 services or materials in part to the various soil conserva-  
95 tion districts created by this article in order to assist them in  
96 carrying on their operations;

97 (7) To obtain options upon and to acquire by purchase,  
98 exchange, lease, gift, grant, bequest, devise or otherwise,  
99 any property, real or personal, or rights or interests therein;  
100 to maintain, administer, operate and improve any properties  
101 acquired, to receive and retain income from such property  
102 and to expend such income as required for operation, main-  
103 tenance, administration or improvement of such properties

104 or in otherwise carrying out the purposes and provisions of  
105 this article; and to sell, lease or otherwise dispose of any of  
106 its property or interests therein in furtherance of the pur-  
107 poses and the provisions of this article. Money received from  
108 the sale of land acquired in the small watershed program shall  
109 be deposited in the special account of the state soil con-  
110 servation committee and expended as herein provided.

111 After having conducted a performance and fiscal audit  
112 through its joint committee on government operations, pur-  
113 suant to section nine, article ten, chapter four of this code,  
114 the Legislature hereby finds and declares that the state soil  
115 conservation committee should be continued and reestablished.  
116 Accordingly, notwithstanding the provisions of section four,  
117 article ten, chapter four of this code, the state soil conserva-  
118 tion committee shall continue to exist until the first day of  
119 July, one thousand nine hundred ninety.

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## CHAPTER 11

(S. B. 665—By Senator Craig and Senator Jones)

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[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-seven, relating to designation of the Mason County Regional State Farm Museum as the West Virginia State Farm Museum; ex officio members of board of directors; rules and regulations.

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

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

**ARTICLE 27. WEST VIRGINIA STATE FARM MUSEUM.****§19-27-1. West Virginia State Farm Museum; ex officio members of the board of directors; rules and regulations.**

1 The corporation now known as "Mason County Re-  
2 gional State Farm Museum" is hereby designated "the  
3 West Virginia State Farm Museum" with the exclusive  
4 right to the use of said designation, after such amend-  
5 ments as may be made necessary by such change of name,  
6 if any, are made in its charter, constitution and bylaws.

7 The governor and commissioner of agriculture are  
8 hereby made ex officio members of the board of directors  
9 of said museum for the purpose of protecting the interests  
10 of the state in the arrangement of the agriculture and  
11 other exhibits.

12 The commissioner of agriculture is hereby empowered  
13 to make and enforce rules and regulations for the purpose  
14 of carrying out the provisions of this section.

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## CHAPTER 12

(Com. Sub. for H. B. 1856—By Delegate Whitlow and Delegate Bailey)

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[Passed March 6, 1984; in effect April 1, 1984. Approved by the Governor.]

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AN ACT to amend article seven, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating generally to the licensure of private clubs by the West Virginia alcohol beverage control commissioner; applications for such licensure and the content thereof; requiring notice of such application for clubs which are to be located within municipalities be given to the clerk or recorder of such municipalities and the duties of such clerk or recorder with respect thereto; report to the governing body of such municipality required and the contents thereof; comments by such municipality to such

commissioner with respect to such licensure and the authority of the commissioner with respect thereto; and certain findings required to be made by the commissioner if licensure is denied.

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

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

**ARTICLE 7. LICENSES TO PRIVATE CLUBS.**

**§60-7-4a. Notice of application for license to be given to municipal clerk or recorder; duties of clerk or recorder; consistency with zoning and community development programs; authority of commissioner.**

1 A person intending to apply for a license to operate a  
2 private club under the provisions of this article at any location  
3 within a municipality shall file a notice of such intention with  
4 the clerk or recorder of such municipality at least ten days  
5 prior to filing an application for such a license with the  
6 commissioner. Such notice shall include the address and a  
7 general description of the premises to be licensed, the food  
8 services to be offered and the patron capacity of the club. The  
9 clerk or recorder of the municipality shall report such notice  
10 to the governing body of such municipality at its next regular  
11 meeting or special meeting to be held not sooner than two days  
12 thereafter, together with a report of the zoning administrator  
13 for such municipality, if any there be, as to whether:

14 (1) The proposed location of said private club is con-  
15 sistent with the zoning ordinances as either a permitted use  
16 or a conditional use of such premises; and

17 (2) The premises are situate in an area designated for  
18 the use of community development block grant funds in the  
19 municipality, and, if so situate, whether the planned use of the  
20 premises is consistent with any plan adopted by the governing  
21 body for revitalization or rehabilitation of such area.

22 Within ten days of such report, the governing body may  
23 submit written comment upon such intended use to the com-  
24 missioner, who shall deny the license upon a finding that

25 the use of the premises is neither a permitted nor a con-  
26 ditional use under the zoning ordinances of such municipality  
27 and that the municipality provides within its business zones  
28 suitable alternative locations. The commissioner may deny  
29 the license upon a finding that such use is incompatible with  
30 any plan adopted by the governing body for revitalization or  
31 rehabilitation of the area wherein such premises are situate.  
32 The municipality shall not unreasonably exclude a use of the  
33 premises which is compatible with such plan or zoning or-  
34 dinance solely because the use includes premises licensed under  
35 this article.

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## CHAPTER 13

(Com. Sub. for H. B. 1097—By Mr. Speaker, Mr. See, and Delegate I. Damron)

[Passed February 3, 1984; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of the revenue sharing trust fund remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-four, to the Adjutant General—State Militia, Account No. 9782, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 11, 1984, which included a statement for the Revenue Sharing Trust Fund; and

WHEREAS, It appears from such statement that there now remains unappropriated a balance in the Revenue Sharing Trust Fund available for further appropriation during the current fiscal year of 1983-84, 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 chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill,



be supplemented by adding the following designated account and line item thereto and with the same to read as follows:

- 1                           **TITLE 2. APPROPRIATIONS.**  
 2   **Section 10a. Appropriation from Revenue Sharing Trust Fund.**  
 3                           134—*Revenue Sharing Trust Fund*  
 4                           *Adjutant General—State Militia*  
 5                           Acct. No. 9782  
 6 1 Property Maintenance ..... \$    74,000

7    The purpose of this supplementary appropriation bill is to  
 8    provide additional moneys to be available for expenditure  
 9    upon the effective date of the bill and in the current fiscal  
 10   year 1983-84. Any unexpended balance remaining at the  
 11   close of the fiscal year 1983-84, as to this item; is hereby  
 12   reappropriated for expenditure during the fiscal year 1984-85.

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## CHAPTER 14

(H. B. 1696—By Delegate Goff and Delegate Childers)

[Passed February 27, 1984; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of treasury from the balance of the revenue sharing trust fund remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-four, to the Insurance Commissioner, Account No. 9790, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 11, 1984, which included a statement for the Revenue Sharing Trust Fund; and

WHEREAS, It appears from such statement that there now remains unappropriated a balance in the Revenue Sharing Trust Fund available for further appropriation during the current fiscal year of 1983-

84, 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 chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, be supplemented by adding the following designated account and line items thereto and with the same to read as follows:

1	TITLE 2. APPROPRIATIONS.	
2	Section 10a. Appropriations from Revenue Sharing Trust Fund.	
3	135— <i>Revenue Sharing Trust Fund</i>	
4	<i>Insurance Commissioner</i>	
5	Acct. No. 9790	
6	1 Personal Services .....	\$ 71,403
7	2 Current Expenses .....	6,272
8	3 Total .....	<u>\$ 77,675</u>

9 The purpose of this supplementary appropriation bill is to  
10 provide additional moneys to be available for expenditure upon  
11 the effective date of the bill and in the current fiscal year  
12 1983-84. Any unexpended balances of these items remaining  
13 at the close of fiscal year 1983-84 are hereby reappropriated  
14 for expenditure during the fiscal year 1984-85.

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## CHAPTER 15

(H. B. 2031—By Delegate Neal and Delegate Jordan)

[Passed March 6, 1984; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Department of Corrections—Central Office, Account No. 3680 and the Department of Corrections—Correctional Units, Account No. 3770, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-four, as appropriated by chapter twenty-

nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, and as such accounts were amended by chapter twelve, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three.

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

That items of the total appropriation of Account No. 3680 and Account No. 3770, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, and as amended as aforesaid, be amended and transferred and with such items to thereafter read as follows:

1	TITLE 2. APPROPRIATIONS.		
2	Section 1. Appropriations from General Revenue.		
3	39— <i>Department of Corrections—Central Office</i>		
4	Acct. No. 3680		
			State General Revenue Fiscal Year 1983-84
5	5	Adult Female Offenders Contract .....	\$ 828,750
6		Current Expenses .....	\$ 803,750
7	6	Total .....	\$ 1,651,135
8	41— <i>Department of Corrections—Corrections Units</i>		
9	Acct. No. 3770		
			State General Revenue Fiscal Year 1983-84
10	2	Current Expenses .....	\$ 5,724,940
11	6	*Total .....	\$ 18,550,969

12 The purpose of this supplementary appropriation bill is to  
13 supplement, amend and transfer the sum of two hundred  
14 thousand dollars, state general revenues, prior appropriated  
15 to item five and the "Current Expenses" subitem thereof in  
16 Account No. 3680 from the Central Office account to the  
17 Correctional Units Account No. 3770 and item two thereof,  
18 being the "Current Expenses" item; with no new moneys being  
19 appropriated hereby. The amounts as newly itemized for ex-  
20 penditure in such accounts, during the current fiscal year, one  
21 thousand nine hundred eighty-four, shall be available for such  
22 expenditure upon the effective date of the bill.

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## CHAPTER 16

(H. B. 2072—By Delegate Neal)

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[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

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

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

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

## 1 TITLE 2. APPROPRIATIONS.

## 2 Section 2. Appropriations of federal funds.

3 57—*West Virginia Air Pollution Control Commission*

4 Acct. No. 4760

		<b>Federal Funds Fiscal Year 1983-84</b>
5	1 Personal Services .....	\$717,704
6	3 Equipment .....	19,700

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

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## CHAPTER 17

(H. B. 1508—By Delegate Polan)

[Passed February 27, 1984; in effect from passage. Approved by the Governor.]

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

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

That items of the total appropriation of Account No. 5690, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, and as amended as aforesaid, and being both prior appropriated federal funds and state general revenues, be supplemented, amended and transferred and with such items to thereafter read as follows:

1	<b>TITLE 2. APPROPRIATIONS.</b>		
2	<b>Section 1. Appropriations from General Revenue.</b>		
3	<i>72—West Virginia Railroad Maintenance Authority</i>		
4	Acct. No. 5690		
		Federal Funds Fiscal Year 1983-84	State General Revenue Fiscal Year 1983-84
5	1	Personal Services .....	\$ — \$ 522,614
6	2	Current Expenses .....	\$ 32,048
7	3	Repairs and Alterations .....	\$ 167,952 \$ 140,000

8 The purpose of this supplementary appropriation bill is to  
9 supplement, amend and transfer certain moneys, both federal  
10 funds and state general revenue, prior appropriated, from  
11 certain line items to certain other line items of the appropria-  
12 tion, with no new moneys being appropriated hereby. The  
13 amounts as newly itemized for expenditure during the current  
14 fiscal year, one thousand nine hundred eighty-four, shall be  
15 available for expenditure upon the effective date of the bill.

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## CHAPTER 18

(H. B. 1932—By Delegate Burke and Delegate Dalton)

[Passed February 29, 1984; in effect from passage. Approved by the Governor.]

**AN ACT** supplementing, amending and transferring amounts of the total appropriations made from the state road fund to



18	13	Nonfederal Aid Construction .....	—	9,446,000
19	14	TOTAL .....	\$—	\$534,680,000

20 The purpose of this bill is to supplement, amend and trans-  
 21 fer certain moneys from items of existing appropriations to  
 22 other items of such appropriations for the designated spending  
 23 unit, and to reflect the total spending authority of the spending  
 24 unit for the 1983-1984 fiscal year, with no new moneys being  
 25 appropriated hereby. The amounts as newly itemized for ex-  
 26 penditure in such fiscal year shall be available for expenditure  
 27 upon the effective date of this bill.

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## CHAPTER 19

(H. B. 1509—By Delegate Polan)

[Passed February 27, 1984; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts be-  
 tween items of the existing appropriation of the Department of  
 Finance and Administration—Information Systems Services Di-  
 vision Fund, Account No. 8151, for fiscal year ending the  
 thirtieth day of June, one thousand nine hundred eighty-four,  
 as appropriated by chapter twenty-nine, acts of the Legislature,  
 regular session, one thousand nine hundred eighty-three, known  
 as the budget bill.

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

That items of the total appropriation of Account No. 8151, as  
 appropriated by chapter twenty-nine, acts of the Legislature, regular  
 session, one thousand nine hundred eighty-three, be supplemented,  
 amended and transferred to read as follows:

1	TITLE 2. APPROPRIATIONS.		
2	Section 3. Appropriations from other funds.		
3	91— <i>Department of Finance and Administration—</i>		
4	<i>Information Systems Services Division Fund</i>		
5	Acct. No. 8151		
6	TO BE PAID FROM SPECIAL REVENUE FUND		
7	2	Current Expenses .....	\$ 5,483,477



8	7	Public Employees Health	
9	8	Insurance .....	240,784
10		The purpose of this supplementary appropriation bill is to	
11		supplement, amend and transfer certain moneys from one	
12		item of the existing appropriation to another item of such	
13		appropriation for the designated spending unit, with no new	
14		moneys being appropriated hereby. The amounts, as newly	
15		itemized for expenditure during the fiscal year 1983-84, shall	
16		be available for expenditure upon the effective date of the	
17		bill.	

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## CHAPTER 20

(H. B. 1520—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed March 7, 1984; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, decreasing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of certain specified items, in the total existing accounts and general revenue appropriations of the Governor's Office, Account No. 1200; of the Office of Economic and Community Development, Account No. 1210; of the Governor's Office—Custodial Fund, Account No. 1230; of the Governor's Office—Civil Contingent Fund, Account No. 1240; of the Office of Emergency Services, Account No. 1300; of the Auditor's Office—General Administration, Account No. 1500; of the Treasurer's Office, Account No. 1600; Municipal Bond Commission, Account No. 1700; of the State Tax Department, Account No. 1800; of the Department of Finance and Administration, Account No. 2100; of the State Board of Insurance, Account No. 2250; of the Attorney General, Account No. 2400; of the Secretary of State, Account No. 2500; of the West Virginia Board of Regents, Account No. 2790 (control); of the West Virginia Board of Regents, Account No. 2800; of the West Virginia College of Osteopathic Medicine, Account No. 2810; of the Marshall University—Medical School, Account No. 2840; of the West Virginia University—Medical School, Account

No. 2850; of the State Department of Education, Account No. 2860; of the State Department of Education—School Lunch Program, Account No. 2870; of the State Board of Education—Vocational Division, Account No. 2890; of the West Virginia Educational Broadcasting Authority, Account No. 2910; of the State Department of Education—Aid to Exceptional Children, Account No. 2960; of the Teachers Retirement Board, Account No. 2980; of the State FFA-FHA Camp and Conference Center, Account No. 3360; of the West Virginia Library Commission, Account No. 3500; of the Department of Culture and History, Account No. 3510; of the Department of Corrections—Probation and Parole Board, Account No. 3650; of the Department of Corrections—Correctional Units, Account No. 3770; of the State Health Department, Account No. 4000; of the Department of Veteran's Affairs—Veterans Home, Account No. 4010; of the Solid Waste Disposal, Account No. 4020; of the Department of Veterans' Affairs, Account No. 4040; of the Department of Human Services, Account No. 4050; of the State Commission on Aging, Account No. 4060; of the State Health Department—Retardation Centers, Account No. 4150; of the State Health Department—Mental Hospitals, Account No. 4160; of the State Health Department—Public Hospitals, Account No. 4170; of the State Board of Education—Rehabilitation Division, Account No. 4400; of the Bureau of Labor and Department of Weights and Measures, Account No. 4500; of the Department of Mines, Account No. 4600; of the West Virginia Air Pollution Control Commission, Account No. 4760; of the Nonintoxicating Beer Commissioner, Account No. 4900; of the West Virginia Racing Commission, Account No. 4950; of the Department of Agriculture, Account No. 5100; of the Farm Management Commission, Account No. 5110; of the Department of Agriculture—Soil Conservation Committee, Account No. 5120; of the Department of Agriculture—Division of Rural Resources, Account No. 5130; of the Geological and Economic Survey, Account No. 5200; of the Department of Natural Resources, Account No. 5650; of the Water Development Authority, Account No. 5670; of the West Virginia Railroad Maintenance Authority, Account No. 5690; of the Department of Public Safety, Account No. 5700; of the Adjutant General—State Militia, Account No. 5800; of the West Vir-

ginia Civil Service System, Account No. 5840; of the West Virginia Public Legal Services Council, Account No. 5900; of the Human Rights Commission, Account No. 5980; of the Women's Commission, Account No. 6000; of the West Virginia Public Employees Retirement Board, Account No. 6140; of the West Virginia Public Employees Insurance Board, Account No. 6150; of the Insurance Commissioner, Account No. 6160; and the State Fire Commission, Account No. 6170, as heretofore appropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-four, by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, as previously supplemented and amended by chapters nine through thirteen, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three.

WHEREAS, The Governor in his State of the State message on January 11, 1984, expressed the need for expiration of said funds, and also stated said expiration would not be detrimental to the efficiency or operation of said departments; and

WHEREAS, Article VI, Section 51 of the Constitution of West Virginia requires each supplementary appropriation bill to be limited to some single work, object or purpose therein stated; such single work, object or purpose of this supplementary appropriation bill is to decrease specified items in the budget bill for fiscal year 1983-84, and expire such funds into the state fund, general revenue, to make available sufficient moneys for revised programs for the state; therefore

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

That the specified items in the total existing accounts and general revenue appropriations of Account Nos. 1200, 1210, 1230, 1240, 1300, 1500, 1600, 1700, 1800, 2100, 2250, 2400, 2500, 2790, 2800, 2810, 2840, 2850, 2860, 2870, 2890, 2910, 2960, 2980, 3360, 3500, 3510, 3650, 3770, 4000, 4010, 4020, 4040, 4050, 4060, 4150, 4160, 4170, 4400, 4500, 4600, 4760, 4900, 4950, 5100, 5110, 5120, 5130, 5200, 5650, 5670, 5690, 5700, 5800, 5840, 5900, 5980, 6000, 6140, 6150, 6160, 6170, appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, as

previously supplemented and amended by chapters nine through thirteen, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three, be supplemented, amended, decreased and caused to expire into the state fund, general revenue, of the state by reducing and decreasing the total sums for such specified line items and with such line items, as decreased, to thereafter read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

State  
General  
Revenue  
Fiscal Year  
1983-84

3 EXECUTIVE

4 5—*Governor's Office*

5 Acct. No. 1200

6	2	Other Personal Services .....	\$	867,888
7	3	Current Expenses .....		378,023
8	4	Equipment .....		1,000
				<hr/>
9	5	Total .....	\$	1,306,911

10 6—*Office of Economic and Community Development*

11 Acct. No. 1210

12	1	Personal Services .....	\$	1,922,003
13	2	Current Expenses .....		2,110,262
14	3	Equipment .....		3,106
15	4	The Economic Development Loan		
16	5	Fund .....		1,212,500
17	7	A.R.C. Assessment .....		310,400
18	8	Partnership Grants .....		1,355,000
19	9	Fire Departments .....		970,000
20	10	Civil Air Patrol .....		86,330
21	11	Emergency Assistance .....		242,500
22	12	Coal Development.....		268,961
				<hr/>
23	17	Total .....	\$	8,701,062

24		7— <i>Governor's Office—Custodial Fund</i>		
25		Acct. No. 1230		
26	1	Unclassified—Total .....	\$	312,255
27		8— <i>Governor's Office—Civil Contingent Fund</i>		
28		Acct. No. 1240		
29	1	Unclassified—Total .....	\$	1,115,500
30		9— <i>Office of Emergency Services</i>		
31		Acct. No. 1300		
32	3	Repairs and Alterations .....	\$	11,318
33	7	Total .....	\$	280,725
34		FISCAL		
35		10— <i>Auditor's Office—General Administration</i>		
36		Acct. No. 1500		
37	4	Equipment .....	\$	156,186
38	5	Microfilm .....		1,000
39	6	Total .....	\$	2,127,974
40		13— <i>Treasurer's Office</i>		
41		Acct. No. 1600		
42	3	Current Expenses .....	\$	307,827
43	4	Equipment .....		10,000
44	5	Microfilm Program .....		—0—
45	6	Total .....	\$	1,023,995
46		15— <i>Municipal Bond Commission</i>		
47		Acct. No. 1700		
48	1	Personal Services .....	\$	71,476
49	4	Total .....	\$	103,833

50		16— <i>State Tax Department</i>	
51		Acct. No. 1800	
52	1	Personal Services .....	\$ 7,475,223
53	2	Current Expenses .....	3,820,334
54	3	Repairs and Alterations .....	22,310
55	4	Equipment .....	118,608
56	5	Circuit Breaker Reimbursement .....	5,000
57	6	Multistate Tax Compact .....	37,500
58	7	Total .....	<u>\$ 26,404,256</u>
59		17— <i>Department of Finance and Administration</i>	
60		Acct. No. 2100	
61	9	Fire Service Fee .....	\$ 40,577
62	17	Total .....	<u>\$ 6,049,514</u>
63		18— <i>State Board of Insurance</i>	
64		Acct. No. 2250	
65	4	Premiums, Claims and	
66	5	Other Expenses .....	\$ 4,486,852
67	6	Total .....	<u>\$ 4,596,117</u>
68		LEGAL	
69		19— <i>Attorney General</i>	
70		Acct. No. 2400	
71	3	Current Expenses .....	\$ 314,868
72	12	Total .....	<u>\$ 2,274,636</u>
73		INCORPORATING AND RECORDING	
74		21— <i>Secretary of State</i>	
75		Acct. No. 2500	
76	4	Equipment .....	\$ 11,248
77	5	Certification of Primary and Gen-	
78	6	eral Elections .....	2,085
79	7	Publication of State Register .....	84,975
80	9	Total .....	<u>\$ 720,554</u>

81

## EDUCATIONAL

82

22—*West Virginia Board of Regents (Control)*

83

Acct. No. 2790

84	1	Personal Services .....	\$107,079,231
85	2	Current Expenses .....	20,049,765
86	3	Repairs and Alterations .....	888,000
87	4	Equipment .....	786,868
88	5	Bureau for Coal Research .....	970,000
89	6	National Research Center for Coal	
90	7	and Energy .....	1,455,000
91	8	Transportation Services—	
92	9	W. V. U. ....	1,304,000
			<hr/>
93	11	Total .....	\$132,532,864

94

23—*West Virginia Board of Regents*

95

Acct. No. 2800

96	2	Current Expenses .....	\$ 305,534
97	4	Scholarship Program .....	3,104,000
98	5	Tuition Contract Programs .....	711,466
			<hr/>
99	6	Total .....	\$ 4,864,033

100

24—*West Virginia College of Osteopathic Medicine*

101

Acct. No. 2810

102	3	Repairs and Alterations .....	\$ 5,000
103	4	Equipment .....	6,000
			<hr/>
104	5	Total .....	\$ 2,655,760

105

25—*Marshall University-Medical School*

106

Acct. No. 2840

107	1	Personal Services .....	\$ 4,279,097
108	2	Current Expenses .....	1,097,000
109	3	Repairs and Alterations .....	48,000
110	4	Equipment .....	108,000
			<hr/>
111	5	Total .....	\$ 5,532,097

112		26— <i>West Virginia University-Medical School</i>	
113		Acct. No. 2850	
114	2	Current Expenses .....	\$ 6,551,000
115	3	Repairs and Alterations .....	—0—
116	4	Equipment .....	55,000
117	5	Family Practice Residency Sup-	
118	6	port Program .....	438,000
119	7	Intern and Residency Support	
120	8	Programs for Community Hos-	
121	9	pitals .....	915,000
			<hr/>
122	11	Total .....	\$ 22,146,000
123		27— <i>State Department of Education</i>	
124		Acct. No. 2860	
125	1	Personal Services .....	\$ 1,848,638
126	2	Current Expenses .....	966,956
127	3	Repairs and Alterations .....	1,067
128	4	Equipment .....	8,400
129	5	Statewide Testing Program .....	744,544
130		Other Expenses ..... \$	386,909
131	7	Regional Education Service	
132	8	Agencies .....	411,728
133	9	Child Development Programs .....	482,961
134	10	Tuition Waiver .....	339,500
			<hr/>
135	11	Total .....	\$ 4,853,794
136		28— <i>State Department of Education—School Lunch Program</i>	
137		Acct. No. 2870	
138	2	Current Expenses .....	\$ 15,047
			<hr/>
139	9	Total .....	\$ 2,107,998
140		29— <i>State Board of Education—Vocational Division</i>	
141		Acct. No. 2890	
142	1	Personal Services .....	\$ 336,689



143	2	Current Expenses .....	142,884
144	9	New and Expanding Industries .....	158,566

145	17	Total .....	\$ 11,999,999
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146                   30—*Educational Broadcasting Authority*

147                                   Acct. No. 2910

148	4	Regional ETV .....	\$ 2,507,272
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149	5	WWVU-TV .....	993,353
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150	7	Total .....	\$ 4,234,623
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151                   32—*State Department of Education—*  
152                                   *Aid for Exceptional Children*

153                                   Acct. No. 2960

154	1	Personal Services .....	\$ 219,180
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155	2	Current Expenses .....	89,920
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156	3	Equipment .....	2,500
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157	8	Total .....	\$ 7,215,270
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158                   33—*Teachers Retirement Board*

159                                   Acct. No. 2980

160	1	Teachers Retirement Fund .....	\$ 40,649,000
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161	4	Total .....	\$ 45,299,000
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162                   35—*State FFA-FHA Camp and Conference Center*

163                                   Acct. No. 3360

164	3	Repairs and Alterations .....	\$ 17,000
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165	4	Equipment .....	10,412
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166	5	Total .....	\$ 213,003
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167                   36—*West Virginia Library Commission*

168                                   Acct. No. 3500

169	5	Per Capita Grants .....	\$ 4,922,376
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170	7	Library Matching Fund		
171	8	*(Construction) .....		38,000
				<hr/>
172	10	Total .....	\$	6,289,051

173                   37—*Department of Culture and History*

## 174                                   Acct. No. 3510

175	1	Personal Services .....	\$	914,863
176	2	Current Expenses .....		276,254
177	4	Equipment .....		49,500
178	5	Arts and Humanities Fund .....		634,110
179		Personal Services .....	145,535	
180	6	Department Programming		
181	7	Funds .....		455,387
182		Outreach and Education/	87,564	
183		Technical Assistance .....	87,823	
184		Cultural Center		
185		Programs .....	280,000	
186	10	Grants, Fairs and Festivals .....		365,422
				<hr/>
187	12	Total .....	\$	3,052,812

## 188                                   CORRECTIONS

189                                   38—*Department of Corrections—*  
190   *Probation and Parole Board*

## 191   Acct. 3650

192	3	Other Personal Services .....	\$	41,502
				<hr/>
193	7	Total .....	\$	142,248

194                   41—*Department of Corrections—Correctional Units*

## 195                                   Acct. No. 3770

196	5	Capital Outlay .....	\$	2,393,937
				<hr/>
197	6	Total .....	\$	17,944,906

198		HEALTH AND HUMAN SERVICES	
199		42— <i>State Health Department</i>	
200		Acct. No. 4000	
201	1	Personal Services .....	\$ 5,531,546
202	4	Equipment .....	59,374
203	5	Reimbursement to Community	
204	6	Mental Health and Mental Re-	
205	7	tardation Centers .....	16,927,796
206	12	State Aid to Local Agencies .....	4,875,909
207	13	Grants to Counties and EMS	
208	14	Entities .....	1,876,611
209	18	Foster Grandparents Stipends/	
210	19	Travel .....	57,370
211	22	Placement Programs for the	
212	23	Developmentally Disabled .....	2,259,800
213	26	Agent Orange .....	250,000
214	27	Alcohol, Drug Abuse and D.D. ....	2,135,044
215	31	Total .....	\$ 43,526,015
216		43— <i>Department of Veterans Affairs—Veterans Home</i>	
217		Acct. No. 4010	
218	1	Personal Services .....	\$ 1,084,476
219	5	Total .....	\$ 1,084,476
220		44— <i>Solid Waste Disposal</i>	
221		Acct. No. 4020	
222	1	Personal Services .....	\$ 82,825
223	4	Total .....	\$ 121,089
224		45— <i>Department of Veterans Affairs</i>	
225		Acct. No. 4040	
226	1	Personal Services .....	\$ 615,158
227	2	Current Expenses .....	118,667
228	3	Equipment .....	3,000

229	4	Educational Opportunities for		
230	5	Children of War Veterans .....	11,000	
231	6	In Aid of Veterans Day Patriotic		
232	7	Exercises .....	4,000	
			<hr/>	
233	10	Total .....	\$ 756,825	
234		<i>46—Department of Human Services</i>		
235		Acct. No. 4050		
236	2	Current Expenses .....	\$ 3,714,856	
237	8	Social Services .....	19,700,465	
238	10	Medical Services .....	49,931,008	
239	11	T.R.I.P. ....	602,000	
			<hr/>	
240	20	Total .....	\$105,212,430	
241		<i>47—State Commission on Aging</i>		
242		Acct. No. 4060		
243	1	Personal Services .....	\$ 95,835	
244	2	Current Expenses .....	58,490	
245	4	Programs for Elderly .....	2,773,237	
246	8	Senior Citizens Centers .....	197,000	
			<hr/>	
247	9	Total .....	\$ 3,179,562	
248		<i>48—State Health Department—Retardation Centers</i>		
249		Acct. No. 4150		
250	1	Personal Services .....	\$ 8,309,136	
251	3	Repairs and Alterations .....	193,090	
252	4	Equipment .....	66,200	
			<hr/>	
253	5	Total .....	\$ 10,058,497	
254		<i>49—State Health Department—Mental Hospitals</i>		
255		Acct. No. 4160		
256	1	Personal Services .....	\$ 17,946,971	
257	2	Current Expenses .....	5,940,063	
258	3	Repairs and Alterations .....	261,320	

259	4	Equipment .....	239,240
260	5	Student Nurse Affiliation	
261	6	Program (Huntington) .....	58,282
			<hr/>
262	9	Total .....	\$ 24,665,847

263        50—*State Health Department—Public Hospitals*

264                                    Acct. No. 4170

265	1	Personal Services .....	\$ 10,394,287
266	2	Current Expenses .....	3,850,393
267	3	Repairs and Alterations .....	176,930
			<hr/>
268	5	Total .....	\$ 14,490,263

269        51—*State Board of Education—Rehabilitation Division*

270                                    Acct. No. 4400

271	1	Personal Services .....	\$ 3,743,874
			<hr/>
272	10	Total .....	\$ 8,677,429

## 273        BUSINESS AND INDUSTRIAL RELATIONS

274                                    53—*Bureau of Labor and Department of*  
275                                    *Weights and Measures*

276                                    Acct. No. 4500

277	1	Personal Services .....	\$ 963,590
278	2	Current Expenses .....	282,126
279	3	Repairs and Alterations .....	10,700
280	4	Equipment .....	2,608
281	5	Labor-Management Advisory	
282	6	Council .....	25,495
			<hr/>
283	7	Total .....	\$ 1,284,519

284                                    54—*Department of Mines*

285                                    Acct. No. 4600

286	1	Personal Services .....	\$ 3,322,247
287	2	Current Expenses .....	1,428,282

70		APPROPRIATIONS	[Ch. 20
288	3	Equipment .....	63,657
289	4	Miner Training Education and	
290	5	Certification .....	125,000
291	6	Board of Coal Mine Health and	
292	7	Safety .....	80,000
293	8	Gas Well Certification .....	190,000
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294	11	Total .....	\$ 5,411,702
295		<i>57—West Virginia Air Pollution Control Commission</i>	
296		Acct. No. 4760	
297	1	Personal Services .....	\$ 510,196
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298	4	Total .....	\$ 676,032
299		<i>60—West Virginia Nonintoxicating</i>	
300		<i>Beer Commissioner</i>	
301		Acct. No. 4900	
302	1	Personal Services .....	\$ 301,777
303	2	Current Expenses .....	78,448
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304	4	Total .....	\$ 380,525
305		<i>61—West Virginia Racing Commission</i>	
306		Acct. No. 4950	
307	1	Personal Services .....	\$ 814,162
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308	4	Total .....	\$ 904,878
309		AGRICULTURE	
310		<i>62—Department of Agriculture</i>	
311		Acct. No. 5100	
312	2	Other Personal Services .....	\$ 1,766,002
313	5	Multiflora Rose Eradication	
314	6	Program .....	75,379
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315	8	Total .....	\$ 3,203,296

316		63— <i>Farm Management Commission</i>		
317		Acct. No. 5110		
318	1	Personal Services .....	\$	905,796
319	2	Current Expenses .....		878,577
320	3	Repairs and Alterations .....		252,000
321	4	Equipment .....		155,362
				<hr/>
322	6	Total .....	\$	2,464,735
323		64— <i>Department of Agriculture—</i>		
324		<i>Soil Conservation Committee</i>		
325		Acct. No. 5120		
326	1	Personal Services .....	\$	294,084
				<hr/>
327	4	Total .....	\$	657,931
328		65— <i>Department of Agriculture—Division of Rural Resources</i>		
329		<i>(Matching Fund)</i>		
330		Acct. No. 5130		
331	1	Personal Services .....	\$	690,815
				<hr/>
332	4	Total .....	\$	923,058
333		CONSERVATION AND DEVELOPMENT		
334		68— <i>Geological and Economic Survey</i>		
335		Acct. No. 5200		
336	1	Personal Services .....	\$	1,190,506
337	2	Current Expenses .....		287,303
				<hr/>
338	6	Total .....	\$	1,608,955
339		69— <i>Department of Natural Resources</i>		
340		Acct. No. 5650		
341	1	Personal Services .....	\$	8,647,406
342	2	Current Expenses .....		2,813,771
343	3	Repairs and Alterations .....		517,261
344	4	Equipment .....		311,372

345	6	Water Resources Board and	
346	7	Reclamation Board of Review .....	105,420
347	12	Chief Logan State Park .....	100,000
348	13	Total .....	\$ 14,284,113
349		<i>71—Water Development Authority</i>	
350		Acct. No. 5670	
351	2	Capital Outlay—Sewer .....	\$ 8,228,050
352	4	Total .....	\$ 8,793,050
353		<i>72—West Virginia Railroad Maintenance Authority</i>	
354		Acct. No. 5690	
355	1	Personal Services .....	\$ 498,640
356	6	Total .....	\$ 775,140
357		PROTECTION	
358		<i>73—Department of Public Safety</i>	
359		Acct. No. 5700	
360	1	Personal Services .....	\$ 13,686,187
361	2	Current Expenses .....	6,402,161
362	6	Total .....	\$ 22,463,781
363		<i>74—Adjutant General—</i>	
364		<i>State Militia</i>	
365		Acct. No. 5800	
366	1	Personal Services .....	\$ 212,462
367	3	Repairs and Alterations .....	50,000
368	4	Equipment .....	6,000
369	5	Compensation of Commanding	
370	6	Officers, Clerical Allowances	
371	7	and Uniform Allowances .....	115,035
372	8	Property Maintenance .....	915,112
373	9	State Armory Board .....	2,422,868
374	11	Total .....	\$ 4,631,477



## 375 MISCELLANEOUS BOARDS AND COMMISSIONS

376 75—*West Virginia Civil Service System*

## 377 Acct. No. 5840

378	1	Personal Services .....	\$	749,670
379	2	Current Expenses .....		233,447
				<hr/>
380	4	Total .....	\$	987,117

381 76—*West Virginia Public Legal Services Council*

## 382 Acct. No. 5900

383	2	Appointed Counsel Fees .....	\$	2,970,014
				<hr/>
384	6	Total .....	\$	3,627,919

385 77—*Human Rights Commission*

## 386 Acct. No. 5980

387	1	Personal Services .....	\$	321,362
388	2	Current Expenses .....		134,904
389	3	Equipment .....		2,882
				<hr/>
390	4	Total .....	\$	459,148

391 78—*Women's Commission*

## 392 Acct. No. 6000

393	2	Current Expenses .....	\$	13,864
				<hr/>
394	3	Total .....	\$	46,710

395 79—*West Virginia Public Employees Retirement Board*

## 396 Acct. No. 6140

397	1	Employers Accumulation Fund .....	\$	11,810,620
				<hr/>
398	5	Total .....	\$	13,430,620

399		80— <i>West Virginia Public Employees Insurance Board</i>	
400		Acct. No. 6150	
401	2	Public Employees Health	
402	3	Insurance—State Contributions .....	\$ 78,743,678
403	4	Total .....	\$ 79,055,000
404		81— <i>Insurance Commissioner</i>	
405		Acct. No. 6160	
406	1	Personal Services .....	\$ 574,568
407	2	Current Expenses .....	193,896
408	4	Total .....	\$ 785,964
409		82— <i>State Fire Commission</i>	
410		Acct. No. 6170	
411	1	Personal Services .....	\$ 547,860
412	2	Current Expenses .....	214,654
413	3	Repairs and Alterations .....	2,670
414	4	Equipment .....	29,845
415	5	Total .....	\$ 795,029

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## CHAPTER 21

(H. B. 2071—By Delegate Farley)

[Passed March 7, 1984; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the special revolving revenue fund, Account No. 8421-09, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill.

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

That the sum of three hundred seventy-five thousand dollars of

the balances in Account No. 8421-09, including balances carried forward on the first day of July, one thousand nine hundred eighty-three, available for expenditure in the current fiscal year 1983-84, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, and with such amount to be available for other and further appropriation upon the effective date of this bill.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire out of the special revolving revenue fund and into the state fund, general revenue of the state, the sum of three hundred seventy-five thousand dollars, such moneys being formerly appropriated by the language of "Sec. 13. Special revenue appropriations." section in the budget bill for the current fiscal year 1983-84.

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## CHAPTER 22

(Com. Sub. for S. B. 1—By Mr. McGraw, Mr. President)

[Passed March 14, 1984; in effect from passage. Approved by the Governor.]

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

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

**Title**

1. **General Provisions.**
2. **Appropriations.**
3. **Administration.**

**TITLE 1. GENERAL PROVISIONS.**

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

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

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

4     “Spending unit” shall mean the department, agency or  
5 institution to which an appropriation is made.

6     The “fiscal year one thousand nine hundred eighty-five”  
7 shall mean the period from July one, one thousand nine  
8 hundred eighty-four, through June thirtieth, one thou-  
9 sand nine hundred eighty-five.

10    “From collections” shall mean that part of the total  
11 appropriation which must be collected by the spending  
12 unit to be available for expenditure. If the authorized  
13 amount of collections is not collected, the total appropria-  
14 tion for the spending unit shall be reduced automatically  
15 by the amount of the deficiency in the collection. If the  
16 amount collected exceeds the amount designated “from  
17 collections,” the excess shall be set aside in a special sur-  
18 plus fund and may be expended for the purpose of the  
19 spending unit as provided by Chapter 5A, Article 2 of the  
20 Code of West Virginia.

1     **Sec. 3. Classification of appropriations.**—An appro-  
2 priation for:

3     “Personal services” shall mean salaries, wages and  
4 other compensation paid to full-time, part-time and tem-  
5 porary employees of the spending unit, but shall not in-  
6 clude fees or contractual payments paid to consultants or  
7 to independent contractors engaged by the spending unit.

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

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

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

17 "Equipment" shall mean equipment items which have  
18 an appreciable and calculable period of usefulness in ex-  
19 cess of one year.

20 "Repairs and alterations" shall mean repairs to struc-  
21 tures and improvements to property which do not in-  
22 crease the capital assets.

23 "Buildings" shall include construction and alteration of  
24 structures and the improvement of lands and shall in-  
25 clude shelter, support, storage, protection or the improve-  
26 ment of a natural condition.

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

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

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

35 Appropriations otherwise classified shall be expended  
36 only where the distribution of expenditures for different  
37 purposes cannot well be determined in advance or it is  
38 necessary or desirable to permit the spending unit free-  
39 dom to spend an appropriation for more than one of the  
40 above classifications.

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

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

**TITLE 2. APPROPRIATIONS.**

- §1. Appropriations from general revenue.  
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- §16. Sinking fund deficiencies.
- §17. Appropriations to pay costs of publication of delinquent corporations.
- §18. Appropriations for local governments.
- §19. Total appropriations.
- §20. General school fund.

1     **Section 1. Appropriations from general revenue.**—From  
 2 the state fund, General Revenue, there is hereby appro-  
 3 priated conditionally upon the fulfillment of the provi-  
 4 sions set forth in Chapter 5A, Article 2 of the Code of  
 5 West Virginia, the following amounts, as itemized for  
 6 expenditure during the fiscal year one thousand nine  
 7 hundred eighty-five.

1     **Sec. 2. Appropriations of federal funds.**—In accord-  
 2 ance with Chapter 4, Article 11, Federal Funds are hereby  
 3 appropriated conditionally upon the fulfillment of the  
 4 provisions set forth in Chapter 5A, Article 2 of the Code  
 5 of West Virginia, the following amounts, as itemized for  
 6 expenditure during the fiscal year one thousand nine  
 7 hundred eighty-five.

8     Any unexpended balances remaining for Federal Funds  
 9 at the close of the fiscal year 1983-84 are hereby reappro-  
 10 priated for expenditure during the fiscal year 1984-85.

## LEGISLATIVE

## 1—Senate

Acct. No. 1010

	Federal Funds Fiscal Year 1984-1985	State General Revenue Fiscal Year 1984-1985
1 Compensation of Members .....	\$ —	\$ 220,000
2 Compensation and per diem of of-		
3 ficers and employees .....	—	566,620
4 Expenses of Members .....	—	155,000
5 Current Expenses and Contin-		
6 gent Fund .....	—	200,000
7 Printing Blue Book .....	—	110,000
8 Total .....	\$ —	\$ 1,251,620

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

14 The appropriations for the Senate for the fiscal year  
15 1983-84 are to remain in full force and effect, and are  
16 hereby reappropriated to June 30, 1985.

17 Any balances so reappropriated may be transferred  
18 and credited to the 1984-85 accounts.

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

23 The Clerk of the Senate, with approval of the President,  
24 is authorized to draw his requisition upon the Auditor,  
25 payable out of the Current Expenses and Contingent  
26 Fund of the Senate, for any bills for supplies and services  
27 that may have been incurred by the Senate and not  
28 included in the appropriation bill, for supplies and ser-  
29 vices incurred in preparation for the opening, the conduct

30 of the business and after adjournment of any regular or  
 31 extraordinary session, and for the necessary operation of  
 32 the Senate offices, the requisition for same to be ac-  
 33 companied by the bills to be filed with the Auditor.

34 The Clerk of the Senate, with written approval of the  
 35 President, or the President of the Senate shall have  
 36 authority to employ such staff personnel during any ses-  
 37 sion of the Legislature as shall be needed in addition to  
 38 staff personnel authorized by the Senate resolution  
 39 adopted during any such session. The Clerk of the Senate,  
 40 with written approval of the President, or the President  
 41 of the Senate shall have authority to employ such staff  
 42 personnel between sessions of the Legislature as shall be  
 43 needed, the compensation of all staff personnel during  
 44 and between sessions of the Legislature, notwithstanding  
 45 any such Senate resolution, to be fixed by the President  
 46 of the Senate. The Clerk is hereby authorized to draw  
 47 his requisitions for the payment of all such staff personnel  
 48 upon the State Auditor, payable out of the appropriation  
 49 for Compensation and per diem of officers and em-  
 50 ployees or Current Expenses and Contingent Fund of the  
 51 Senate for such services.

52 For duties imposed by law and the Senate, the Clerk  
 53 of the Senate shall be paid a monthly salary as provided  
 54 in Senate resolution adopted January, 1984, and payable  
 55 out of the amount appropriated for Compensation and  
 56 per diem of officers and employees.

### 2—House of Delegates

#### Acct. No. 1020

1	Compensation of Members .....	\$ —	\$ 346,000
2	Compensation and per diem of of-		
3	ficers and employees .....	—	406,000
4	Expenses of Members .....	—	611,000
5	Current Expenses and Contin-		
6	gent Fund .....	—	825,000
			<hr/>
7	Total.....	\$ —	\$ 2,188,000

8 The appropriations for the House of Delegates for the  
9 fiscal year 1983-84 are to remain in full force and effect,  
10 and are hereby reappropriated to June 30, 1985.

11 Any balances so reappropriated may be transferred and  
12 credited to the 1984-85 accounts.

13 Upon the written request of the Clerk of the House of  
14 Delegates, the State Auditor shall transfer amounts  
15 between items of the total appropriation in order to pro-  
16 tect or increase the efficiency of the service.

17 The Clerk of the House of Delegates, with the approval  
18 of the Speaker, is authorized to draw his requisition up-  
19 on the Auditor, payable out of the Contingent Fund of the  
20 House of Delegates, for any bills for supplies and services  
21 that may have been incurred by the House of Delegates,  
22 and not included in the appropriation bill, for bills, for  
23 services and supplies incurred in preparation for the open-  
24 ing of the session and after adjournment, and for the nec-  
25 essary operation of the House of Delegates offices, the  
26 requisition for the same to be accompanied by bills to be  
27 filed with the Auditor.

28 The Speaker of the House of Delegates, upon approval  
29 of the House Committee on Rules, shall have authority  
30 to employ such staff personnel during and between ses-  
31 sions of the Legislature as shall be needed, in addition to  
32 personnel designated in the House resolution, and the  
33 compensation of all personnel shall be as fixed in such  
34 House resolution, for the session, or fixed by the Speaker,  
35 with the approval of the House Committee on Rules, dur-  
36 ing and between sessions of the Legislature, notwithstand-  
37 ing such House resolution. The Clerk of the House is  
38 hereby authorized to draw requisitions upon the State  
39 Auditor, payable from the Compensation and per diem of  
40 officers and employees fund or the Current Expenses and  
41 Contingent Fund of the House of Delegates for such ser-  
42 vices.

43 For duties imposed by law and by the House of Dele-  
44 gates, including salary allowed by law as keeper of the  
45 rolls, the Clerk of the House of Delegates shall be paid a

46 monthly salary as provided in the House resolution, unless  
 47 increased between sessions under the authority of the  
 48 Speaker, with approval of the House Committee on Rules,  
 49 and payable from the Compensation and per diem of  
 50 officers and employees item or the Current Expenses and  
 51 Contingent Fund item of the House of Delegates.

### 3—Joint Expenses

#### Acct. No. 1030

1	Joint Committee on Government		
2	and Finance .....	\$ —	\$ 3,358,425
3	To pay cost of Legislative Printing	—	740,000
4	Rule Making Review Committee	—	50,000
<hr/>			
5	Total .....	\$ —	\$ 4,148,425

6 The appropriation for Joint Expenses for the fiscal year  
 7 1983-84 are to remain in full force and effect and are  
 8 hereby reappropriated to June 30, 1985. Any balances so  
 9 reappropriated may be transferred and credited to the  
 10 1984-85 accounts.

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

### JUDICIAL

#### 4—Supreme Court—General Judicial

#### Acct. No. 1110

1	Personal Services .....	\$ —	15,213,241
2	Other Expenses .....	—	2,692,058
3	Judges Retirement System .....	—	1,034,623
4	Other Court Costs .....	—	2,011,700
5	Judicial Training Program .....	—	100,000
6	Mental Hygiene Fund .....	—	320,000
<hr/>			
7	Total .....	\$ —	\$ 21,371,622

8 This appropriation shall be administered by the Admin-  
 9 istrative Director of the State Supreme Court of Appeals

10 who shall draw his requisitions for warrants in payment  
 11 in the form of payrolls, making deductions therefrom, as  
 12 required by law, for taxes and other items.

13 The appropriation for Judges' Retirement System is to  
 14 be transferred to the Judges' Retirement Fund, in accor-  
 15 dance with the law relating thereto upon requisition of  
 16 the Administrative Director of the State Supreme Court  
 17 of Appeals.

18 Any unexpended balance remaining in this appropria-  
 19 tion at the close of the fiscal year 1983-84 is hereby re-  
 20 appropriated for expenditure during the fiscal year 1984-  
 21 85.

22 Any balances so reappropriated may be transferred and  
 23 credited to the 1984-85 accounts.

### EXECUTIVE

#### 5—Governor's Office

##### Acct. No. 1200

1	Salary of Governor .....	\$ —	\$ 65,507
2	Other Personal Services .....	—	961,237
3	Current Expenses .....	—	366,405
4	Equipment .....	—	4,340
5	Total .....	\$ —	\$ 1,397,489

#### 6—Office of Economic and Community Development

##### Acct. No. 1210

1	Personal Services .....	\$ 1,661,818	\$ 2,155,814
2	Current Expenses .....	1,869,617	2,290,400
3	Equipment .....	12,850	16,500
4	The Economic Development Loan		
5	Fund .....	—	1,000,000
6	Regional Council .....	—	220,000
7	A.R.C. Assessment .....	—	210,000
8	Partnership Grants .....	—	1,000,000
9	Fire Departments .....	—	800,000
10	Civil Air Patrol .....	—	89,000

11	Aeronautics Commission—Airport		
12	Matching .....	—	300,000
13	Emergency Assistance .....	—	100,000
14	Coal Development .....	—	290,845
15	National Youth Science Camp .....	—	100,000
16	Learn not to Burn—Public School		
17	Education Program .....	—	—0—
18	To Local Entities .....	34,324,777	—
19	Transfer to State Spending Units	7,335,000	—
<hr/>			
20	Total .....	\$ 45,204,062	\$ 8,572,559

21 Any unexpended balance remaining in the appropria-  
 22 tion for “Federal State Coordination”, “Coal Development  
 23 Authority”, “Regional Council”, “Community Water De-  
 24 velopment and Partnership Grants”, “Fire Depart-  
 25 ments”, “Emergency Assistance to Small Municipal and  
 26 Public Service Districts Water and Sewage Systems” and  
 27 “Flood”, at the close of the fiscal year 1983-84 is hereby  
 28 reappropriated for expenditure during fiscal year 1984-85.

29 The amount appropriated for “Coal Development”  
 30 shall not be used regarding any matter affecting health  
 31 and safety.

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

Acct. No. 1220

1 Any unexpended balance remaining in the appropria-  
 2 tion “Emergency Jobs Program—Public Service Jobs”,  
 3 “Vocational Centers Computer Network”, and “Emerg-  
 4 ency Jobs Program—Parks” at the close of the fiscal  
 5 year 1983-84 is hereby reappropriated for expenditure  
 6 during fiscal year 1984-85.

*8—Governor’s Office—Custodial Fund*

Acct. No. 1230

1	Unclassified—Total .....	\$ —	\$ 333,322
2	To be used for current general expenses, including com-		
3	pensation of employees, household maintenance, cost of		

- 4 official functions and any additional household expenses  
5 occasioned by such official functions.

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

Acct. No. 1240

1      Unclassified—Total .....\$ —           \$ 1,081,635

2      Of the appropriation it is the intent that funds be ex-  
3      pended for the publication of the Governor's official  
4      papers, inaugural expenses and the painting of the Gov-  
5      ernor's official portrait.

6      Of the appropriation there may be expended, at the dis-  
7      cretion of the Governor, an amount not to exceed \$1,000  
8      as West Virginia's contribution to the Interstate Oil Com-  
9      pact Commission.

10     Any unexpended balance remaining in this appropri-  
11     ation at the close of the fiscal year 1983-84 is hereby re-  
12     appropriated for expenditure during the fiscal year 1984-  
13     85.

10—*Office of Emergency Services*

Acct. No. 1300

1	Personal Services .....	\$ 220,685	\$ 251,330
2	Current Expenses .....	189,846	44,371
3	Repairs and Alterations .....	25,000	6,500
4	Equipment .....	116,495	—
5	To Local Entities .....	675,000	—
6	Transfer to State Spending		
7	Units .....	394,000	
		\$ 1,621,026	\$ 302,201
8	Total .....	\$ 1,621,026	\$ 302,201

FISCAL

11—*Auditor's Office—General Administration*

Acct. No. 1500

1	Salary of State Auditor .....	\$ —	\$ 42,580
2	Other Personal Services .....	—	1,502,174
3	Current Expenses .....	—	653,672



4	Equipment .....	—	53,000
5	Microfilm .....	—	20,000
6	Total .....	\$ —	\$ 2,271,426

7 Any unexpended balance remaining in the appropria-  
 8 tion for "Equipment" at the close of the fiscal year 1983-84  
 9 is hereby reappropriated for expenditure during the fiscal  
 10 year 1984-85.

12—*Auditor's Office—Social Security*

Acct. No. 1510

1 To match contributions of state employees for  
 2 Social Security—Total .....\$ — \$ 19,975,584

3 The above appropriation is intended to cover the state's  
 4 share of social security costs for those spending units op-  
 5 erating from the General Revenue Fund. The State De-  
 6 partment of Highways, Department of Motor Vehicles,  
 7 Workers' Compensation Commissioner, Public Service  
 8 Commission, and other departments operating from Spe-  
 9 cial Revenue Funds and/or Federal Funds shall pay their  
 10 proportionate share of the social security cost for their  
 11 respective divisions.

12 Any unexpended balance remaining in the appropria-  
 13 tion for "Auditor's Office—Social Security" at the close  
 14 of the fiscal year 1983-84 is hereby reappropriated for  
 15 expenditure during the fiscal year 1984-85.

13—*Auditor's Office—Unemployment Compensation*

Acct. No. 1520

1 Unclassified—Total.....\$ — \$ 1,900,000

2 The above appropriation is intended to cover the state's  
 3 share of unemployment compensation costs for those  
 4 spending units operating from the General Revenue Fund.  
 5 The State Department of Highways, Department of Mo-  
 6 tor Vehicles, Workers' Compensation Commissioner, and  
 7 other departments operating from Special Revenue Funds  
 8 and/or Federal Funds shall pay their proportionate share

9 of the Unemployment Compensation cost for their res-  
10 pective divisions.

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

14—*Treasurer's Office*

Acct. No. 1600

1	Salary of State Treasurer .....	\$ —	\$ 45,855
2	Other Personal Services .....	—	731,908
3	Current Expenses .....	—	302,835
4	Equipment .....	—	30,000
5	Microfilm Program .....	—	10,000
<hr/>			
6	Total .....	\$ —	\$ 1,120,598

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

Acct. No. 1650

1	Total .....	\$ —	\$ 15,706,500
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2 Any unexpended balance remaining in the appropria-  
3 tion for "Treasurer's Office—School Building Sinking  
4 Fund" at the close of the fiscal year 1983-84 is hereby  
5 reappropriated for expenditure during the fiscal year  
6 1984-85.

16—*Municipal Bond Commission*

Acct. No. 1700

1	Personal Services .....	\$ —	\$ 80,868
2	Current Expenses .....	—	54,100
3	Equipment .....	—	1,000
<hr/>			
4	Total .....	\$ —	\$ 135,968

17—*State Tax Department*

## Acct. No. 1800

1	Personal Services .....	\$ —	\$ 9,190,979
2	Current Expenses .....	—	6,200,902
3	Repairs and Alterations .....	—	23,000
4	Equipment .....	—	147,806
5	Circuit Breaker Reimbursement .....	—	15,000
6	Multi-State Tax Compact .....	—	57,500
7	Property Reappraisal Program ..	—	9,301,273
<hr/>			
8	Total .....	\$ —	\$ 24,936,460

9 Any unexpended balance remaining in the appropriation for "Other Expenses" and "Property Reappraisal Program" at the close of the fiscal year 1983-84 is hereby  
 10 reappropriated for expenditure during the fiscal year  
 11 1984-85.  
 12  
 13

18—*Department of Finance and Administration*

## Acct. No. 2100

1	Personal Services .....	\$ 119,206	\$ 2,525,677
2	Current Expenses .....	1,328,552	1,065,200
3	Repairs and Alterations .....	1,000	252,500
4	Equipment .....	641,065	42,800
5	Postage .....	—	1,800,000
6	Utilities .....	—	410,000
7	Public Transportation .....	—	410,000
8	Fire Service Fee .....	—	39,000
9	Building Equipment and Supplies .....	—	12,200
10	So. Regional Ed. Board ..	—	80,000
11	Council of State Governments .....	—	37,300
12	National Governors Association ..	—	39,800
13	So. States Energy Board .....	—	19,400
<hr/>			
14	Total .....	\$ 2,089,823	\$ 6,733,877

15 The Workers' Compensation Commissioner, Department  
 16 of Human Services, Public Service Commission, Department  
 17 of Natural Resources, Department of Motor Vehicles,  
 18 State Department of Highways, State Health

19 Department and State Tax Department—Income Tax  
 20 Division shall reimburse the Postage appropriation of the  
 21 Department of Finance and Administration monthly for  
 22 all meter service. Any spending unit operating from  
 23 Special Revenue or receiving reimbursement for postage  
 24 costs from the federal government shall refund to the  
 25 Postage account of the Department of Finance and Ad-  
 26 ministration such amounts. Should this appropriation for  
 27 postage be insufficient to meet the mailing requirements of  
 28 the State spending units as set out above, any excess  
 29 postage meter service requirements shall be a proper  
 30 charge against the units, and each spending unit shall  
 31 refund to the Postage appropriation of the Department of  
 32 Finance and Administration any amounts required for  
 33 the department for postage in excess of this appropriation.

34 Any unexpended balance remaining in the "Postage  
 35 Account" at the close of the fiscal year 1983-84 is hereby  
 36 reappropriated for expenditure during the fiscal year  
 37 1984-85.

38 The State Department of Highways shall reimburse the  
 39 appropriation of the Department of Finance and Adminis-  
 40 tration monthly for all actual expense incurred pursuant  
 41 to the provisions of Chapter 17, Article 2A, Section 13 of  
 42 the Code of West Virginia.

19—*State Board of Insurance*

Acct. No. 2250

1	Personal Services .....	\$ —	\$ 86,106
2	Current Expenses .....	—	38,000
3	Equipment .....	—	3,000
4	Premiums, Claims and		
5	Other Expenses .....	—	4,000,000
6	Total .....	\$ —	\$ 4,127,106

7 The above appropriation on lines 4 and 5 is for the pur-  
 8 pose of paying premiums, self-insurance losses, loss ad-  
 9 justment expenses and loss prevention engineering fees  
 10 for property, casualty and fidelity insurance for the vari-  
 11 ous state agencies. Should this appropriation be insuffi-

12 cient to meet the requirements of the state spending units,  
 13 any excess costs shall be a proper charge against the  
 14 units and each spending unit shall reimburse to the Board  
 15 of Insurance any amounts required for that department  
 16 for costs in excess of this appropriation.

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

22 Any or all of the funds appropriated for "Premiums,  
 23 Claims and Other Expenses" may be transferred to a  
 24 special account for disbursement for payment of premi-  
 25 ums and insurance losses.

### LEGAL

#### 20—Attorney General

##### Acct. No. 2400

1	Salary of Attorney General .....	\$ —	\$ 45,855
2	Other Personal Services .....	—	1,766,079
3	Current Expenses .....	—	401,965
4	Equipment .....	—	63,815
5	Publication of Reports and		
6	Opinions .....	—	20,000
7	To Protect the Resources or Tax		
8	Structure of the State in Con-		
9	troversies or Legal Proceedings		
10	affecting same .....	—	3,250
11	Consumer Protection .....	—	292,239
	Personal Services .. —	220,822	
	Current Expenses .... —	62,977	
	Equipment .....	8,440	
12	Total .....	\$ —	\$ 2,593,203

13 When legal counsel or secretarial help is appointed by  
 14 the Attorney General, for any state spending unit, this  
 15 account shall be reimbursed from such unit's appropriated  
 16 account in an amount agreed upon by the Attorney Gen-  
 17 eral and the proper authority of said spending unit.

18 Any unexpended balance remaining in the appropria-  
 19 tion for "Publication of Reports and Opinions" at the  
 20 close of the fiscal year 1983-84 is hereby reappropriated  
 21 for expenditure during the fiscal year 1984-85.

21—*Commission on Uniform State Laws*

Acct. No. 2450

1	Unclassified—Total .....	\$ —	\$ 12,000
2	To pay expenses of members of the Commission on		
3	Uniform State Laws.		

INCORPORATING AND RECORDING

22—*Secretary of State*

Acct. No. 2500

1	Salary of Secretary of State .....	\$ —	\$ 39,305
2	Other Personal Services .....	—	463,510
3	Current Expenses .....	—	192,799
4	Equipment .....	—	28,000
5	Certification of Primary and Gen-		
6	eral Elections .....	—	6,000
7	Publication of State Register .....	—	94,075
8	Election Training Presentation ...	—	15,000
9	Total .....	\$ —	\$ 838,689

EDUCATIONAL

23—*West Virginia Board of Regents (Control)*

Acct. No. 2790

1	Personal Services .....	\$ —	\$119,671,368
2	Current Expenses .....	—	23,898,000
3	Repairs and Alterations .....	—	1,309,000
4	Equipment .....	—	1,124,000
5	Bureau of Coal Research .....	—	1,205,000
6	National Research Center for Coal		
7	and Energy .....	—	1,600,000
8	Transportation Services—		
9	W.V.U. ....	—	—0—
10	Doctoral Research—W.V.U. ....	—	25,000

11	Autism Training Center .....	—	—0—
12	Total .....	\$ —	\$ 148,832,368

24—*West Virginia Board of Regents*

## Acct. No. 2800

1	Personal Services .....	\$ —	\$ 802,937
2	Current Expenses .....	—	378,000
3	Equipment .....	—	7,000
4	Higher Education Grant Program .....	—	3,500,000
5	Tuition Contract Programs .....	—	710,000
6	Total .....	\$ —	\$ 5,397,937

25—*West Virginia College of Osteopathic Medicine*

## Acct. No. 2810

1	Personal Services .....	\$ —	\$ 2,960,057
2	Current Expenses .....	—	818,000
3	Repairs and Alterations .....	—	50,000
4	Equipment .....	—	77,000
5	Primary Health Training .....	—	200,000
6	Total .....	\$ —	\$ 4,105,057

26—*Marshall University—Medical School*

## Acct. No. 2840

1	Personal Services .....	\$ —	\$ 4,724,332
2	Current Expenses .....	—	1,099,000
3	Repairs and Alterations .....	—	50,000
4	Equipment .....	—	100,000
5	Total .....	\$ —	\$ 5,973,332

27—*West Virginia University—Medical School*

## Acct. No. 2850

1	Personal Services .....	\$ —	\$ 16,047,182
2	Current Expenses .....	—	6,236,000
3	Repairs and Alterations .....	—	300,000
4	Equipment .....	—	375,000

5	Family Practice Residency Sup-		
6	port .....	—	458,000
7	Community Hospital Residency		
8	Support .....	—	945,000
9	Charity Care .....	—	—0—
<hr/>			
10	Total .....	\$ —	\$ 24,361,182
11	May be transferred to West Virginia University—		
12	Medical School Fund upon requisition of the Governor.		

28—*State Department of Education*

## Acct. No. 2860

1	Personal Services .....	\$ —	\$ 2,166,982
2	Current Expenses .....	5,800	1,219,077
3	Repairs and Alterations .....	—	1,100
4	Equipment .....	—	22,400
5	Statewide Testing Program .....	—	1,003,656
	Personal Services .....	—	192,983
	Other Expenses .....	—	498,411
	Equipment .....	—	14,500
	Professional Competency Test-		
	ing .....	297,762	
6	Aid to Children's Home .....	—	50,000
7	Regional Education Service		
8	Agencies .....	—	417,318
9	Child Development Programs .....	—	528,779
10	Tuition Waiver .....	—	262,212
11	Microcomputer Network Program .....	—	200,000
<hr/>			
12	Total .....	\$ 5,800	\$ 5,871,524

13 The above appropriation includes the State Board of  
14 Education and their executive office.

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

## Acct. No. 2870

1	Personal Services .....	\$ 415,919	\$ 163,911
2	Current Expenses .....	699,542	19,512
3	Repairs and Alterations .....	1,500	—



4	Equipment .....	8,000	—
5	Aid to Counties—Includes hot		
6	lunches and canning for hot		
7	lunches .....	—	1,950,000
8	To Local Entities .....	27,098,055	—
9	Total .....	\$ 28,223,016	\$ 2,133,423

## 30—State Board of Education—Vocational Division

## Acct. No. 2890

1	Personal Services .....	\$ 930,571	\$ 409,483
2	Current Expenses .....	547,000	149,962
3	Repairs and Alterations .....	2,000	—
4	Equipment .....	7,000	4,000
5	Vocational Aid .....	—	9,830,000
6	Adult Basic Education .....	—	1,248,800
7	Start-up Funds and Equipment		
8	for New and Existing		
9	Facilities .....	—	1,250,000
10	New and Expanding Industries ...	—	174,926
11	Construction .....	—	916,967
12	To Local Entities .....	6,554,529	—
13	Total .....	\$ 8,041,100	\$ 13,984,138

14 Any unexpended balance remaining in the appropria-  
 15 tion for "New and Expanding Industries" at the close of  
 16 the fiscal year 1983-84 is hereby reappropriated for ex-  
 17 penditure during the fiscal year 1984-85.

## 31—Educational Broadcasting Authority

## Acct. No. 2910

1	Personal Services .....	\$ —	\$ 87,651
2	Current Expenses .....	47,000	41,500
3	Equipment .....	553,000	15,000
4	Regional ETV and Radio .....	—	4,358,668
5	Capital Outlay—Equipment .....	—	332,000
6	Total .....	\$ 600,000	\$ 4,834,819

7 "Regional ETV and Radio" is for participation in the  
8 construction and operation of Regional ETV and radio  
9 stations by state colleges and universities.

10 Funds may be transferred to Special Revenue accounts  
11 for matching county and/or Federal Funds.

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

Acct. No. 2950

1	Professional Educators .....	\$ —	\$417,997,292
2	Service Personnel .....	—	146,895,454
3	Fixed Charges .....	—	65,273,357
4	Transportation .....	—	25,132,137
5	Administration .....	—	2,926,000
6	Other Current Expenses .....	—	36,718,028
7	Improve Instructional Programs ..	—	25,276,986
<hr/>			
8	Basic Foundation Allowances.....	—	720,219,254
9	Less Local Share .....	—	101,805,160
<hr/>			
10	Total Basic State Aid .....	—	618,414,094
11	Loss Reduction .....	—	2,699,443
12	Staffing Improvement .....	—	1,583,023
	Professional Educators .....	837,201	—0—
	Service Personnel .....	745,822	—0—
13	Increased Enrollment .....	—	800,000
<hr/>			
14	Total.....	\$ —	\$623,496,560

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

Acct. No. 2960

1	Personal Services .....	\$ 333,021	\$ 318,689
2	Current Expenses .....	914,406	226,020
3	Equipment .....	25,971	16,022
4	Out-of-State Instruction .....	—	428,000
5	Aid-to-Counties .....	—	7,958,678
	Grant County		
	Awards .....	—	6,054,303

	Regional Education Service		
	Agency Grants .... —	212,000	
	Special State		
	Projects .....	—	209,397
	Regional Education		
	Service Agency		
	Evaluations .....	—	220,000
	Medley Educational		
	Programs .....	—	1,135,000
	Summer Camp for		
	Gifted Children....	—	77,978
	Equipment for		
	the Blind .....	—	50,000
6	To Local Entities .....	19,303,805	—
7	Total.....	\$ 20,577,203	\$ 8,947,409

8 The appropriation for "Out-of-State Instruction" may  
 9 be expended to provide instruction, care and maintenance  
 10 for educable persons who have multiple handicaps and  
 11 for whom the state provides no facilities.

12 The appropriation for "Aid-to-Counties" may be ex-  
 13 pended by county or state operated institutions including  
 14 institutions housing juveniles for the initiation, mainten-  
 15 ance and/or improvements of special education programs  
 16 including employment of new professional education  
 17 personnel solely serving exceptional children; training of  
 18 educational personnel to work with exceptional children;  
 19 and supportive costs such as materials, transportation,  
 20 contracted services, minor renovation and other costs  
 21 directly related to the special education delivery process  
 22 prescribed by the State Board of Education.

23 The appropriation for "Special State Projects" may be  
 24 expended to support (1) an instructional materials center  
 25 for visually handicapped children at the West Virginia  
 26 Schools for the Deaf and the Blind, (2) the State Special  
 27 Olympics program, (3) the West Virginia Advisory coun-  
 28 cil for the Education of Exceptional Children at the  
 29 West Virginia College of Graduate Studies, and (4) state-  
 30 wide training activities or programs benefiting excep-  
 31 tional children.

34—*Teachers' Retirement Board*

## Acct. No. 2980

1	Teachers Retirement Fund .....	\$ —	\$ 39,670,000
2	Supplemental Benefits for		
3	Annuitants .....	—	5,623,000
4	Total .....	\$ —	\$ 45,293,000

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

## Acct. No. 3330

1	Personal Services .....	\$ —	\$ 3,328,186
2	Current Expenses .....	—	898,800
3	Repairs and Alterations .....	—	396,200
4	Equipment .....	—	223,100
5	Total .....	\$ —	\$ 4,846,286

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

## Acct. No. 3360

1	Personal Services .....	\$ —	\$ 136,805
2	Current Expenses .....	—	93,700
3	Repairs and Alterations .....	—	19,000
4	Equipment .....	—	5,250
5	Total .....	\$ —	\$ 254,755

37—*West Virginia Library Commission*

## Acct. No. 3500

1	Personal Services .....	\$ 86,449	\$ 1,001,283
2	Current Expenses .....	138,490	220,500
3	Repairs and Alterations .....	10,000	4,100
4	Equipment .....	110,000	10,000
5	Per-Capita Grants .....	—	5,812,964
6	Books, Periodicals and Films .....	—	250,000
7	Library Matching Fund—		
8	(Construction) .....	—	20,000
9	To Local Entities .....	400,000	—
10	Total .....	\$ 744,939	\$ 7,318,847

11 Any unexpended balance remaining in the appropria-  
 12 tion for "Library Matching Fund (Construction)" at the  
 13 close of the fiscal year 1983-84 is hereby reappropriated  
 14 for expenditure during the fiscal year 1984-85.

38—*Department of Culture and History*

Acct. No. 3510

1	Personal Services .....	\$ 81,743	—	\$ 1,048,872
2	Current Expenses .....	100,364	—	287,899
3	Repairs and Alterations..	—	—	30,100
4	Equipment .....	4,000	—	51,900
5	Arts and Humanities			
6	Fund .....	430,000	—	656,539
	Personal Services .....	—	178,688	—
	Current Expenses .....	7,500	601	
	Grants and Contractual			
	Services .....	422,900	477,250	
7	Department Programming			
8	Funds .....	—	—	480,400
	Outreach and Educa-			
	tion .....	—	92,570	
	Technical Assistance ...	—	92,830	
	Cultural Center			
	Programs .....	—	295,000	
9	Historical Preservation	171,565	—	150,751
10	Washington Carver Camp	—	—	140,113
11	Grants, Fairs and Festivals	—	—	711,500
12	Independence Hall .....	—	—	—0—
13	Total .....	\$ 788,072		\$ 3,558,074

14 The above appropriations for "Arts and Humanities  
 15 Fund", "Department Programming Funds", "Grants, Fairs  
 16 and Festivals", and "Washington Carver Camp" shall be  
 17 expended only upon authorization of the Department of  
 18 Culture and History and in accordance with the provi-  
 19 sions of Chapter 5A and Chapter 12, Article 3 of the Code  
 20 of West Virginia.

21 All federal moneys received as reimbursement to the  
 22 Department of Culture and History for moneys expended

23 from the General Revenue Fund for Arts and Humanities  
 24 and Historical Preservation are hereby reappropriated for  
 25 the purposes as originally made, including Personal Ser-  
 26 vices, Current Expenses and Equipment.

27 Any unexpended balance remaining in the appropria-  
 28 tion "Washington Carver Camp" at the close of the fiscal  
 29 year 1983-84 is hereby reappropriated for expenditure  
 30 during the fiscal year 1984-85.

## CORRECTIONS

39—*Department of Corrections**Probation and Parole Board*

## Acct. No. 3650

1	Salaries of Members of Board			
2	of Probation and Parole .....	\$	—	\$ 80,625
3	Other Personal Services .....		—	55,850
4	Current Expenses .....		—	25,000
5	Repairs and Alterations .....		—	300
6	Equipment .....		—	1,600
				<hr/>
7	Total .....	\$	—	\$ 163,375

40—*Department of Corrections—Central Office*

## Acct. No. 3680

1	Personal Services .....	\$	—	\$ 449,665
2	Current Expenses .....		—	213,418
3	Repairs and Alterations .....		—	1,500
4	Equipment .....		—	200,000
5	Adult Female Offenders Contract		—	944,646
	Personal Services .....		20,904	—
	Current Expenses .....		923,742	—
				<hr/>
6	Total .....	\$	—	\$ 1,809,229

41—*West Virginia Penitentiary*

## Acct. No. 3750

1 Any unexpended balance remaining in the appropria-

2 tion for "Capital Outlay" at the close of the fiscal year  
 3 1983-84 is hereby reappropriated for expenditure dur-  
 4 ing the fiscal year 1984-85.

42—*Department of Corrections—Correctional Units*

Acct. No. 3770

1	Personal Services .....	\$ —	\$ 10,970,754
2	Current Expenses .....	—	6,898,394
	Inmate Medical Expenses .....	1,586,887	
	Other .....	5,311,507	
3	Repairs and Alterations .....	—	239,500
4	Equipment .....	—	115,000
5	Capital Outlay .....	—	2,000,000
		<hr/>	<hr/>
6	Total.....	\$ —	\$ 20,223,648

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

HEALTH AND HUMAN SERVICES

43—*State Health Department—Central Office*

Acct. No. 4000

1	Personal Services .....	\$ 2,064,991	\$ 6,647,836
2	Current Expenses .....	18,191,227	4,628,830
3	Repairs and Alterations .....	114,000	4,000
4	Equipment .....	74,914	130,104
5	Reimbursement to Community		
6	Mental Health and Mental Re-		
7	tardation Centers .....	—	17,801,508

8	Reimbursement to Community		
9	Behavioral Health Programs		
10	for Social Services .....	—	1,613,632
11	Special Olympics .....	—	28,000
12	State Aid to Local Agencies.....	—	5,717,898
13	Grants to Counties and EMS		
14	Entities .....	—	1,870,000
15	Maternal and Child Health Clin-		
16	ics, Clinicians and Medical Con-		
17	tracts and Fees .....	—	1,430,000
18	Foster Grandparents Stipends/		
19	Travel .....	—	62,370
20	Hemophiliac Assistance Program	—	122,326
21	Placement Programs for the		
22	Developmentally Disabled .....	—	3,842,750
23	Primary Care Contracts to Com-		
24	munity Health Centers .....	—	1,831,500
25	Agent Orange .....	—	200,000
26	Alcohol, Drug Abuse, and D. D. ...	—	2,436,000
27	Corporate Nonprofit Commu-		
28	nity Health Center F.M.H.A.		
29	Mortgage Finance .....	—	105,913
30	Total.....	\$ 20,445,132	\$ 48,472,667

31 Any unexpended balance remaining in the appropria-  
 32 tion for "Agent Orange" at the end of the fiscal year  
 33 1983-84 is hereby reappropriated for expenditure during  
 34 fiscal year 1984-85.

44—*Department of Veterans Affairs—Veterans Home*

Acct. No. 4010

1	Personal Services .....	\$ —	\$ 1,164,064
2	Current Expenses .....	502,250	—
3	Equipment .....	37,000	—
4	Total.....	\$ 539,250	\$ 1,164,064

5 Any unexpended balance remaining in the appropria-  
 6 tion for "Repairs and Alterations" and "Equipment" at  
 7 the close of the fiscal year 1983-84 is hereby reappropria-  
 8 ted for expenditure during the fiscal year 1984-85.



## 45—Solid Waste Disposal

## Acct. No. 4020

1	Personal Services .....	\$ —	\$ 93,095
2	Current Expenses .....	—	32,100
3	Equipment .....	—	1,000
4	Total.....	\$ —	\$ 126,195

## 46—Department of Veterans Affairs

## Acct. No. 4040

1	Personal Services .....	\$ —	\$ 670,270
2	Current Expenses .....	—	129,998
3	Equipment .....	—	2,000
4	Educational opportunities for chil-		
5	dren of War Veterans.....	—	9,500
6	In aid of Veterans Day Patriotic		
7	Exercises .....	—	7,000
8	Total.....	\$ —	\$ 818,768

9 Moneys in Lines 6-7 above are to be expended subject to  
 10 the approval of the Department of Veterans Affairs upon  
 11 presentation of satisfactory plans by the Grafton G.A.R.  
 12 Post, American Legion, Veterans of Foreign Wars and  
 13 Sons of Veterans.

## 47—Department of Human Services

## Acct. No. 4050

1	Personal Services .....	\$ 13,343,898	\$ 10,214,707
2	Current Expenses .....	174,138,839	3,783,056
3	Repairs and Alterations .....	—	17,000
4	Equipment .....	69,290	56,757
5	Assistance Payments .....	—	19,591,317
6	Social Security Matching Fund ..	—	686,018
7	Indigent Burials .....	—	620,000
8	Social Services .....	—	20,075,465
9	Emergency Assistance .....	—	1,000,000
10	Medical Services .....	—	52,141,731
11	T.R.I.P. ....	—	605,000

12	Food Stamp (Value) .....	150,000,000★	—
13	Government Donated Food		
14	(Value) .....	22,000,000★	—
15	Public Employees Retirement		
16	Matching .....	—	428,403
17	Public Employees Health		
18	Insurance .....	—	420,004
19	Handicapped Children .....	—	—0—
20	Total .....	\$187,552,027	\$109,639,458

★For Information Only—Not included in Total

48—*State Commission on Aging*

Acct. No. 4060

1	Personal Services .....	\$ 302,882	\$ 124,465
2	Current Expenses .....	165,788	68,000
3	Equipment .....	7,200	—
4	Programs for Elderly .....	—	2,987,000
5	Senior Citizen Centers—Land		
6	Acquisition, Construction		
6a	and Repairs and Alterations ...	—	200,000
7	Golden Mountaineer Program ...	—	103,365
	Personal Services .....	45,365	—
	Other Expenses .....	58,000	—
8	Silver Haired Legislature .....	—	20,000
9	To Local Entities .....	7,430,712	—
10	Total .....	\$ 7,906,582	\$ 3,502,830

11 Any unexpended balance remaining in the appropria-  
 12 tion for "Senior Citizen Centers—land acquisition, con-  
 13 struction, repairs and alterations", at the close of the  
 14 fiscal year 1983-84 is hereby reappropriated for expendi-  
 15 ture during the fiscal year 1984-85.

49—*State Health Department—Medical Facilities (Control)*

Acct. No. 4070

1	Personal Services .....	\$ —	\$ 42,681,539
2	Current Expenses .....	—	13,369,075
3	Repairs and Alterations .....	—	667,850
4	Equipment .....	—	385,593

5	Student Nurse Affiliation		
6	Program (Huntington) .....	—	77,619
7	Psychiatric Training Center—		
8	Student Nurses (Weston) .....	—	237,710
9	Total.....	\$ —	\$ 57,419,386

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

50—*State Board of Education—Rehabilitation Division*

Acct. No. 4400

1	Personal Services .....	\$ 10,552,861	\$ 5,023,186
2	Current Expenses .....	4,958,801	1,035,300
3	Repairs and Alterations .....	130,536	1,400
4	Equipment .....	303,845	51,600
5	Case Services .....	2,739,223	2,302,500
6	Social Security Matching Fund ..	538,497	302,996
7	WVU—Reimbursement .....	594,000	50,900
8	Workshop Development .....	527,000	1,181,400
9	Blind Services Coordinating Unit	—	37,000
10	Disability Determination—Medical		
11	Payments .....	6,589,000	—
12	Total .....	\$ 26,933,763	\$ 9,986,282

51—*Governor's Commission for the Blind*

Acct. No. 4450

1	Unclassified—Total .....	\$ —	\$ —	—0—
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52—*Governor's Commission on Disabled Persons*

Acct. No. 4460

1	Unclassified—Total .....	\$ —	\$ —	—0—
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## BUSINESS AND INDUSTRIAL RELATIONS

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

Acct. No. 4500

1	Personal Services .....	\$ 203,214	\$ 1,082,852
2	Current Expenses .....	96,493	319,300
3	Repairs and Alterations .....	—	900
4	Equipment .....	—	4,600
5	Labor Management Advisory		
6	Council .....	—	25,650
7	Total .....	\$ 299,707	\$ 1,433,302

54—*Department of Employment Security*

Acct. No. 4510

1	Interest Assessment—Total .....	\$ —	\$ 1,900,000
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2 The above appropriation is intended to pay the federal  
3 government interest due on loan advances made to the  
4 state of West Virginia for payment of unemployment  
5 compensation benefits.

55—*Department of Mines*

Acct. No. 4600

1	Personal Services .....	\$ —	\$ 3,617,142
2	Current Expenses .....	220,000	1,448,350
3	Equipment .....	100,000	71,000
4	Miner Training, Education and		
5	Certification .....	—	139,592
6	Board of Coal Mine Health and		
7	Safety .....	—	95,176
8	Gas Well Certification .....	—	228,022

9	Development of Mine Safety		
10	Program .....	—	205,641
11	Total.....	\$ 320,000	\$ 5,804,923

56—*Interstate Commission on Potomac River Basin*

## Acct. No. 4730

1	West Virginia's contribution to Potomac River		
2	Basin Interstate Commission ....	\$ —	\$ 19,600

57—*Ohio River Valley Water Sanitation Commission*

## Acct. No. 4740

1	West Virginia's contribution to the Ohio River		
2	Valley Water Sanitation Com-		
3	mission .....	\$ —	\$ 70,490

58—*West Virginia Air Pollution Control Commission*

## Acct. No. 4760

1	Personal Services .....	\$ 820,653	\$ 573,262
2	Current Expenses .....	379,590	177,512
3	Equipment .....	40,000	1,000
4	Total.....	\$ 1,240,243	\$ 751,774

59—*State Athletic Commission*

## Acct. No. 4790

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

## Acct. No. 4850

1 Any unexpended balance remaining in the appropria-  
 2 tion "Airport Matching" at the close of the fiscal year  
 3 1983-84 is hereby reappropriated for expenditure during  
 4 fiscal year 1984-85.

61—*West Virginia Nonintoxicating Beer Commissioner*

## Acct. No. 4900

1	Personal Services .....	\$ —	\$ 324,472
2	Current Expenses .....	—	76,200

3	Equipment .....	—	300
4	Total .....	\$ —	\$ 400,972

62—*West Virginia Racing Commission*

## Acct. No. 4950

1	Personal Services .....	\$ —	\$ 1,014,558
2	Current Expenses .....	—	131,500
3	Equipment .....	—	13,000
4	Total .....	\$ —	\$ 1,159,058

## AGRICULTURE

63—*Department of Agriculture*

## Acct. No. 5100

1	Salary of Commissioner .....	\$ —	\$ 42,580
2	Other Personal Services .....	228,708	2,027,972
3	Current Expenses .....	143,366	1,036,537
4	Equipment .....	55,000	88,080
5	Multiflora Rose Eradication		
6	Program .....	—	115,000
7	Gypsy Moth Program .....	—	300,000
8	Total .....	\$ 427,074	\$ 3,610,169

9 Out of the above General Revenue Funds a sum may  
 10 be used to match Federal Funds for the eradication and  
 11 control of pest and plant disease.

64—*Farm Management Commission*

## Acct. No. 5110

1	Personal Services .....	\$ —	\$ 1,019,747
2	Current Expenses .....	—	990,000
3	Repairs and Alterations .....	—	265,000
4	Equipment .....	—	293,000
5	Livestock Purchase .....	—	273,000
6	Total .....	\$ —	\$ 2,840,747

65—Department of Agriculture—  
Soil Conservation Committee

Acct. No. 5120

1	Personal Services .....	\$ —	\$ 344,221
2	Current Expenses .....	—	122,699
3	Watershed Program .....	—	150,000
		<hr/>	<hr/>
4	Total.....	\$ —	\$ 616,920

5 Any unexpended balance remaining in the appropria-  
6 tion for "Watershed Program" and "Mud River Flood  
7 Control Project", at the close of the fiscal year 1983-84 is  
8 hereby reappropriated for expenditure during the fiscal  
9 year 1984-85.

66—Department of Agriculture—Division of Rural Resources  
(Matching Fund)

Acct. No. 5130

1	Personal Services .....	\$ —	\$ 791,717
2	Current Expenses .....	—	222,287
3	Equipment .....	—	47,000
		<hr/>	<hr/>
4	Total.....	\$ —	\$ 1,061,004

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

67—Department of Agriculture—Meat Inspection

Acct. No. 5140

1	Personal Services .....	\$ 400,506	\$ 394,525
2	Current Expenses .....	288,057	183,446
3	Equipment .....	2,395	2,395
		<hr/>	<hr/>
4	Total.....	\$ 690,958	\$ 580,366

5 Any part or all of the appropriation from General  
6 Revenue may be transferred to Special Revenue Fund  
7 for the purpose of matching Federal Funds for the above  
8 named program.

68—*Department of Agriculture—Agricultural Awards*

## Acct. No. 5150

1	Agriculture Awards .....	\$ —	\$ 70,000
2	Fairs and Festivals .....	—	148,450
3	Total .....	\$ —	\$ 218,450

## CONSERVATION AND DEVELOPMENT

69—*Geological and Economic Survey*

## Acct. No. 5200

1	Personal Services .....	\$ 121,475	\$ 1,319,990
2	Current Expenses .....	115,653	304,612
3	Repairs and Alterations .....	11,500	20,888
4	Equipment .....	44,000	14,000
5	Special Studies .....	—	60,698
6	Total .....	\$ 292,628	\$ 1,720,188

70—*Department of Natural Resources*

## Acct. No. 5650

1	Personal Services .....	\$ 6,034,700	\$ 9,510,442
2	Current Expenses .....	6,980,399	3,163,678
3	Repairs and Alterations .....	24,378,294	630,000
4	Equipment .....	1,114,299	452,203
5	Fire Prevention Control .....	—	696,580
	Personal Services ..	—	634,180
	Other Expenses .....	—	62,400
6	Water Resources Board and		
7	Reclamation Board of Review .....	—	122,380
8	Debt Service .....	—	1,116,540
9	Canaan Valley State Park .....	—	—
10	Cacapon State Park .....	—	—
11	Capital Outlay .....	—	232,000
12	Chief Logan State Park .....	—	100,000
13	To Local Entities .....	29,800	—
14	Transfer To State .....	—	—
15	Spending Units .....	205,000	—
16	Total .....	\$ 38,742,492	\$ 16,023,823



17 Any unexpended balance remaining in the appropria-  
 18 tion for "Reeds Creek Hatchery," and "Chief Logan State  
 19 Park" at the close of the fiscal year 1983-84 is hereby re-  
 20 appropriated for expenditure during the fiscal year 1984-  
 21 85.

22 Any unexpended balance remaining in the appropria-  
 23 tion for "Castleman's Run Lake" at the close of the fiscal  
 24 year 1983-84 is hereby reappropriated for expenditure  
 25 during the fiscal year 1984-85 and redesignated for "Chief  
 26 Logan State Park".

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

71—*Public Land Corporation*

Acct. No. 5660

1	Personal Services .....	\$ —	\$ 171,500
2	Current Expenses .....	—	73,400
3	Repairs and Alterations .....	—	20,000
4	Equipment .....	—	5,000
5	Total.....	\$ —	\$ 269,900

6 Any unexpended balance remaining in the appropria-  
 7 tion for "Public Land Corporation" and "Blennerhassett  
 8 Island" at the close of the fiscal year 1983-84 is hereby  
 9 reappropriated for expenditure during the fiscal year  
 10 1984-85.

11 Any unexpended balance in the appropriation item as  
 12 originally made to this account in fiscal year 1972-73  
 13 under the designation "Total" and the amount, and as  
 14 brought forward and remaining at the close of fiscal  
 15 year 1983-84, is hereby reappropriated for expenditure  
 16 during fiscal year 1984-85, and is hereby redesignated, as  
 17 to purpose, for "Chief Logan State Park".

72—*Water Development Authority*

Acct. No. 5670

1	Capital Outlay—Sewer .....	\$ —	\$ 237,790
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2	Capital Outlay—Water .....	—	164,820
3	Loan and Grant Program .....	—	377,390
4	Total .....	\$ —	\$ 780,000

5 Any unexpended balance remaining in the appropriation  
6 for "Capital Outlay," "Phase III Hardship Grants,"  
7 "Construction Grants Phase III," "Hardship Grants,"  
8 "Bolair PSD," "McMechen Water Project," "Loan and  
9 Grant Program," "Capital Outlay—Sewer," and "Capital  
10 Outlay—Water," at the close of fiscal year 1983-84, is  
11 hereby reappropriated for expenditure during fiscal  
12 year 1984-85.

73—*West Virginia Railroad Maintenance Authority*

Acct. No. 5690

1	Personal Services .....	\$ —	\$ 530,476
2	Current Expenses .....	—	140,000
3	Repairs and Alterations .....	200,000	240,000
4	Baltimore and Ohio—		
5	Passenger Service .....	—	—0—
6	Total .....	\$ 200,000	\$ 910,476

PROTECTION

74—*Department of Public Safety*

Acct. No. 5700

1	Personal Services .....	\$ 13,754	\$ 15,257,418
2	Current Expenses .....	59,579	7,452,318
3	Repairs and Alterations .....	—	300,000
4	Equipment .....	7,630	2,100,000
5	Emergency Fund .....	—	10,000
6	Total .....	\$ 80,963	\$ 25,119,736

75—*Adjutant General—State Militia*

Acct. No. 5800

1	Personal Services .....	\$ 170,808	\$ 259,288
2	Current Expenses .....	352,758	730,000

3	Repairs and Alterations .....	187,000	62,000
4	Equipment .....	5,000	20,000
5	Compensation of Commanding		
6	Officers, Clerical Allowances		
7	and Uniform Allowances .....	—	124,000
8	Property Maintenance .....	—	1,006,658
9	State Armory Board .....	—	2,428,805
10	College Education Fund .....	—	200,000
		<hr/>	<hr/>
11	Total.....	\$ 715,566	\$ 4,830,751

## MISCELLANEOUS BOARDS AND COMMISSIONS

76—*West Virginia Civil Service System*

## Acct. No. 5840

1	Personal Services .....	\$ —	\$ 861,579
2	Current Expenses .....	—	246,500
3	Equipment .....	—	4,000
		<hr/>	<hr/>
4	Total.....	\$ —	\$ 1,112,079

5     The director shall maintain accurate records reflecting  
6     the cost of administering the provisions of this appropria-  
7     tion. At the close of each quarter-year period, the director  
8     shall summarize the cost and shall bill each department,  
9     commission, board or agency which receives support from  
10    any funds other than General Revenue Fund for a prorata  
11    share of the administrative cost based on the relationship  
12    between the quarterly-average number of employees in  
13    the service of such department, commission, board or  
14    agency and the quarterly-average number of employees  
15    in the service of all the departments, commissions, boards  
16    and agencies of the state for the appropriate calendar  
17    quarter.

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

77—*West Virginia Public Legal Services Council*

## Acct. No. 5900

1	Council and Central Office .....	\$ —	\$ 187,866
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2	Appointed Counsel Fees .....	—	3,823,881
3	Public Defender Operations .....	—	352,300
4	Criminal Law Research Center		
5	Appellate Division .....	—	125,742
6	Total.....	\$ —	\$ 4,489,789

7 Any unexpended balance remaining in the appropriation "Appointed Counsel Fees" at the close of the fiscal year 1983-84 is hereby reappropriated for expenditure during the fiscal year 1984-85.

78—*Human Rights Commission*

Acct. No. 5980

1	Personal Services .....	\$ 185,688	\$ 429,543
2	Current Expenses .....	65,999	233,948
3	Equipment .....	—	11,708
4	Total.....	\$ 251,687	\$ 675,199

79—*Women's Commission*

Acct. No. 6000

1	Personal Services .....	\$ —	\$ 49,880
2	Current Expenses .....	—	22,300
3	Equipment .....	—	1,900
4	Total.....	\$ —	\$ 74,080

80—*West Virginia Public Employees Retirement Board*

Acct. No. 6140

1	Employers Accumulated Fund ...	\$ —	\$ 12,561,966
2	Expense Fund .....	—	70,000
3	Supplemental Benefits For		
4	Annuitants .....	—	1,992,000
5	Total.....	\$ —	\$ 14,623,966

6 The above appropriation is intended to cover the state's  
7 share of West Virginia Public Employees Retirement  
8 coverage for those departments operating from the Gen-

9 eral Revenue Fund. The State Department of Highways,  
 10 Department of Motor Vehicles, Workers' Compensation  
 11 Commissioner, Public Service Commission and other de-  
 12 partments operating from Special Revenue Funds and/or  
 13 Federal Funds shall pay their proportionate share of the  
 14 retirement costs for their respective divisions. When  
 15 specific appropriations are not made, such payments may  
 16 be made from the balance in the various Special Revenue  
 17 funds in excess of specific appropriations.

81—*West Virginia Public Employees Insurance Board*

Acct. No. 6150

1	Expense Fund .....	\$ —	\$ 334,648
2	Public Employees Health Insurance—		
3	State Contributions .....	—	91,059,068
4	Total .....	\$ —	\$ 91,393,716

5 The above appropriation is intended to cover the state's  
 6 share of Public Employees Health Insurance costs for  
 7 those spending units operating from the General Revenue  
 8 Fund. The State Department of Highways, Department  
 9 of Motor Vehicles, Workers' Compensation Commission-  
 10 er, Public Service Commission and other departments  
 11 operating from Special Revenue Funds and/or Federal  
 12 Funds shall pay their proportionate share of the Public  
 13 Employees Health Insurance cost for their respective  
 14 divisions. When specific appropriations are not made,  
 15 such payments may be made from the balances in the  
 16 various Special Revenue Fund in excess of specific ap-  
 17 propriations.

18 Any unexpended balance remaining in the appropria-  
 19 tion "Public Employees Health Insurance State Contri-  
 20 butions" at the close of the fiscal year 1983-84 is hereby  
 21 reappropriated for expenditure during the fiscal year  
 22 1984-85.

82—*Insurance Commissioner*

Acct. No. 6160

1	Personal Services .....	\$ —	\$ 638,696
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2	Current Expenses .....	—	225,400
3	Equipment .....	—	15,000
4	Total .....	\$ —	\$ 879,096

83—*State Fire Commission*

## Acct. No. 6170

1	Personal Services .....	\$ —	\$ 623,822
2	Current Expenses .....	—	295,175
3	Repairs and Alterations .....	—	3,151
4	Equipment .....	—	36,374
5	Total .....	\$ —	\$ 958,522

84—*Claims from General Revenue*

## Acct. No. 6200

Total .....\$ —0—

1 **Sec. 3. Appropriations from other funds.**—From the  
 2 funds designated there is hereby appropriated condition-  
 3 ally upon the fulfillment of the provisions set forth in  
 4 Chapter 5A, Article 2 of the Code of West Virginia, the  
 5 following amounts as itemized for expenditure during  
 6 the fiscal year one thousand nine hundred eighty-five.

1 **Sec. 4. Appropriations of federal funds.**—In accor-  
 2 dance with Chapter 4, Article 11, Federal Funds are here-  
 3 by appropriated conditionally upon the fulfillment of the  
 4 provisions set forth in Chapter 5A, Article 2 of the Code  
 5 of West Virginia, the following amounts, as itemized for  
 6 expenditure during the fiscal year one thousand nine  
 7 hundred eighty-five.

8 Any unexpended balances remaining for Federal Funds  
 9 at the close of the fiscal year 1983-84 are hereby reappro-  
 10 priated for expenditure during the fiscal year 1984-85.

## 85—State Department of Highways

Acct. No. 6700

## TO BE PAID FROM STATE ROAD FUND

	Federal Revenue Fiscal Year 1984-85	Other Revenue Fiscal Year 1984-85
1 Maintenance Expressway, Trunk-		
2 line and Feeder .....	\$ —	\$ 47,523,000
3 Maintenance, State Local Services	—	64,707,000
4 Maintenance, Contract Paving and		
5 Secondary Road Maintenance	—	10,584,000
6 Inventory Revolving .....	—	1,425,000
7 Equipment Revolving .....	—	4,125,000
8 General Operations .....	—	17,674,000
9 Debt Service .....	—	85,000,000
10 Interstate Construction .....	—	168,768,000
11 Other Federal Aid Programs .....	—	123,821,000
12 Appalachian Program .....	—	22,738,000
13 Nonfederal Aid Construction .....	—	3,789,000
14 Total.....	\$ —	\$550,154,000

15 The above appropriation line items are to be expended  
 16 in accordance with the provisions of Chapter 17 and 17C,  
 17 Code of West Virginia, one thousand nine hundred thirty-  
 18 one, as amended.

19 The State Commissioner of Highways shall have the  
 20 authority to operate revolving funds within the state road  
 21 fund for the operation and purchase of various types of  
 22 equipment used directly and indirectly in the construc-  
 23 tion and maintenance of roads and for the purchase of  
 24 inventories and materials and supplies.

25 There is hereby appropriated within the above items  
 26 sufficient money for the payment of claims. accrued or  
 27 arising during this budgetary period, to be paid in accord-  
 28 ance with Chapter 14, Article 2, Sections 17 and 18, Code  
 29 of West Virginia, one thousand nine hundred thirty-one,  
 30 as amended.

86—*Department of Motor Vehicles*

Acct. No. 6710

## TO BE PAID FROM STATE ROAD FUND

1	Personal Services .....	\$ —	\$ 2,437,312
2	Current Expenses .....	—	3,580,457
3	Equipment .....	—	50,950
4	Purchase of License Plates .....	—	493,200
5	Social Security Matching .....	—	168,412
6	Public Employees Retirement		
7	Matching .....	—	227,581
8	Public Employees Health		
9	Insurance .....	—	349,237
10	Total .....	\$ —	\$ 7,307,149

87—*Department of Education—Veterans Education*

Acct. No. 7979

## TO BE PAID FROM FEDERAL FUNDS

1	Personal Services .....	\$ 65,120	\$ —
2	Other Expenses .....	55,793	—
3	Equipment .....	500	—
4	Total .....	\$ 121,413	\$ —

5 Expenditures from this appropriation shall not exceed  
6 the amount to be reimbursed by the Federal Government.

7 Federal Funds in excess of the amounts hereby appro-  
8 priated may be made available by budget amendment  
9 upon request of the State Superintendent of Schools and  
10 approval of the Governor for any emergency which might  
11 arise in the operation of this division during the fiscal  
12 year.

88—*Treasurer's Office—Abandoned and Unclaimed Property*

Acct. No. 8000

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 56,020
2	Other Expenses .....	—	48,795
3	Total .....	\$ —	\$ 104,815



89—*Real Estate Commission*

Acct. No. 8010

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 153,295
2	Current Expenses .....	—	118,700
3	Equipment .....	—	5,000
4	Total .....	\$ —	\$ 276,995

5 The total amount of this appropriation shall be paid out  
6 of collections of license fees as provided by law.

90—*West Virginia Racing Commission*

Acct. No. 8080

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Medical Expenses .....	\$ —	\$ 5,000
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2 The total amount of this appropriation shall be paid  
3 from Special Revenue Fund out of collections of license  
4 fees and fines as provided by law.

5 No expenditures shall be made from this account ex-  
6 cept for hospitalization, medical care and/or funeral ex-  
7 penses for persons contributing to this fund.

91—*Auditor's Office—Land Department Operating Fund*

Acct. No. 8120

## TO BE PAID FROM SPECIAL REVENUE FUND

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

92—*Department of Finance and Administration—  
Division of Purchasing—Revolving Fund*

Acct. No. 8140

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 809,379
2	Current Expenses .....	—	490,300

3	Equipment .....	—	60,000
4	Social Security Matching .....	—	55,907
5	Public Employees Retirement		
6	Matching .....	—	75,784
7	Public Employees Health		
8	Insurance .....	—	97,700
<hr/>			
9	Total.....	\$ —	\$ 1,589,070

10 The total amount of this appropriation shall be paid  
11 from Special Revenue Fund as provided by Chapter 5A,  
12 Article 2 of the Code of West Virginia.

13 The above appropriation includes salaries and operating  
14 expenses.

15 There is hereby appropriated from this fund, in addi-  
16 tion to the above appropriation, the necessary amount for  
17 the purchase of supplies for resale.

93—*Department of Finance and Administration—  
Information Systems Services Division Fund*

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 2,821,339
2	Current Expenses .....	—	5,633,400
3	Equipment .....	—	207,000
4	Social Security Matching .....	—	197,150
5	Public Employees Retirement		
6	Matching .....	—	266,494
7	Public Employees Health		
8	Insurance .....	—	358,300
<hr/>			
9	Total.....	\$ —	\$ 9,483,683

10 The total amount of this appropriation shall be paid  
11 from Special Revenue Fund out of collections made by  
12 the Department of Finance and Administration as pro-  
13 vided by law.

94—*Department of Agriculture*

Acct. No. 8180

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 413,267
2	Current Expenses .....	—	23,390
3	Social Security Matching .....	—	28,978
4	Public Employees Retirement		
5	Matching .....	—	39,188
6	Public Employees Health		
7	Insurance .....	—	31,000
8	Total .....	\$ —	\$ 535,823

9 The total amount of this appropriation shall be paid  
 10 from Special Revenue Fund out of collections made by  
 11 the Department of Agriculture as provided by law.

95—*General John McCausland Memorial Farm*

Acct. No. 8194

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total .....	\$ —	\$ 80,000
2	Funds for the above appropriation shall be disbursed		
3	in accordance with Chapter 19, Article 26 of the Code of		
4	West Virginia.		

96—*State Committee of Barbers and Beauticians*

Acct. No. 8220

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 134,691
2	Current Expenses .....	—	108,700
3	Equipment .....	—	1,800
4	Total .....	\$ —	\$ 245,191

5 The total amount of this appropriation shall be paid  
 6 from Special Revenue Fund out of collections made by  
 7 the State Committee of Barbers and Beauticians as pro-  
 8 vided by law.

97—*Public Service Commission*

Acct. No. 8280

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ 51,600	\$ 3,329,521
2	Current Expenses .....	22,127	1,287,700
3	Equipment .....	—	106,000
4	Social Security Matching .....	—	233,511
5	Public Employees Retirement		
6	Matching .....	—	315,780
7	Public Employees Health		
8	Insurance .....	—	296,200
			<hr/>
9	Total .....	\$ 73,727	\$ 5,568,712

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

14 Any unexpended balance remaining in the appropria-  
 15 tion for "Headquarters Building Development" at the  
 16 close of fiscal year 1983-84 is hereby reappropriated for  
 17 expenditure during the fiscal year 1984-85.

98—*Public Service Commission—Gas Pipeline Division*

Acct. No. 8285

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ 26,875	\$ 155,157
2	Current Expenses .....	15,841	68,600
3	Equipment .....	—	1,500
4	Social Security Matching .....	—	10,898
5	Public Employees Retirement		
6	Matching .....	—	14,737
7	Public Employees Health		
8	Insurance .....	—	11,000
			<hr/>
9	Total .....	\$ 42,716	\$ 261,892

10 The total amount of this appropriation shall be paid  
 11 from Special Revenue Fund out of receipts collected for

12 or by the Public Service Commission pursuant to and in  
 13 the exercise of regulatory authority over pipeline com-  
 14 panies.

15 Any unexpended balance remaining in the appropria-  
 16 tion for "Headquarters Building Development" at the  
 17 close of fiscal year 1983-84 is hereby reappropriated for  
 18 expenditure during the fiscal year 1984-85.

99—*Public Service Commission—Motor Carrier Division*

Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 1,017,857
2	Current Expenses .....	—	348,000
3	Equipment .....	—	5,000
4	Social Security Matching .....	—	71,282
5	Public Employees Retirement		
6	Matching .....	—	96,396
7	Public Employees Health		
8	Insurance .....	—	94,000
			<hr/>
9	Total.....	\$ —	\$ 1,632,535

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

15 Any unexpended balance remaining in the appropria-  
 16 tion for "Headquarters Building Development" at the  
 17 close of fiscal year 1983-84 is hereby reappropriated for  
 18 expenditure during the fiscal year 1984-85.

100—*Public Service Commission—Consumer Advocate*

Acct. No. 8295

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 270,053
2	Current Expenses .....	—	289,000
3	Equipment .....	—	6,800
4	Social Security Matching .....	—	18,955

5	Public Employees Retirement		
6	Matching .....	—	25,633
7	Public Employees Health		
8	Insurance .....	—	14,300
<hr/>			
9	Total .....	\$ —	\$ 624,741
10	The total amount of this appropriation shall be paid		
11	from Special Revenue Fund out of collections made by		
12	the Public Service Commission.		

101—*Department of Natural Resources*

Acct. No. 8300

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 3,633,715
2	Current Expenses .....	—	3,071,120
3	Repairs and Alterations .....	—	304,900
4	Equipment .....	—	500,100
5	Land Purchase and Buildings .....	—	831,000
<hr/>			
6	Total .....	\$ —	\$ 8,340,835

7 The total amount of this appropriation shall be paid  
8 from Special Revenue Fund out of fees collected by the  
9 Department of Natural Resources. Expenditures shall be  
10 limited to the amounts appropriated except for federal  
11 funds received and special funds collected at state parks.

12 Any unexpended balances remaining in the prior ap-  
13 propriation item "Land Purchase and Buildings" at the  
14 close of fiscal year 1983-84 and available for capital im-  
15 provement and land purchase purposes are hereby re-  
16 appropriated for expenditure in fiscal year 1984-85, all  
17 in accordance with Chapter 20, Article 2, Section 34, Code  
18 of West Virginia.

102—*Department of Public Safety—Inspection Fees*

Acct. No. 8350

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 464,817
2	Current Expenses .....	—	199,567

3	Repairs and Alterations .....	—	2,000
4	Equipment .....	—	12,000
<hr/>			
5	Total.....	\$ —	\$ 678,384

6 The total amount of this appropriation shall be paid  
7 from Special Revenue Fund out of fees collected for in-  
8 spection stickers as provided by law.

103—*Department of Public Safety*

*Drunk Driving Prevention Fund*

Acct. No. 8355

TO BE PAID FROM SPECIAL REVENUE FUND

1	Current Expenses .....	\$ —	\$ 595,000
2	Equipment .....	—	5,000
<hr/>			
3	Total.....	\$ —	\$ 600,000

4 The total amount of this appropriation shall be paid  
5 from Special Revenue Funds out of receipts collected  
6 pursuant to sections nine-a and sixteen, article fifteen,  
7 chapter eleven of the Code of West Virginia, one thousand  
8 nine hundred thirty-one, as amended, and paid into a  
9 revolving fund account in the state treasury.

104—*Department of Banking*

Acct. No. 8395

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 615,286
2	Current Expenses .....	—	610,586
3	Equipment .....	—	6,000
<hr/>			
4	Total.....	\$ —	\$ 1,231,872

105—*Court of Claims—Crime Victim Reparation*

Acct. No. 8412

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 115,000
2	Current Expenses .....	—	27,000

3	Equipment .....	—	8,000
4	Total.....	\$ —	\$ 150,000

5 These funds are intended to be expended for court  
6 costs and administrative costs.

106—*State Health Department—Hospital Services  
Revenue Account (Special Fund)  
(Capital Improvement, Renovation and Operation)*

Acct. No. 8500

TO BE PAID FROM SPECIAL REVENUE FUND

1	Administrative .....	\$ —	\$ 104,640
	Personal Expenses \$	70,520	
	Current Expenses	34,120	
2	Contingency for repairs and al-		
3	terations, equipment, emer-		
4	gency services and miscellan-		
5	eous.....	—	500,000
6	Greenbrier Center—Capital out-		
7	lay and renovations for certifica-		
8	tion, life safety and energy con-		
9	servation .....	—	130,000
10	Lakin Hospital — Capital outlay		
11	and renovations for certifica-		
12	tion, life safety and energy con-		
13	servation .....	—	150,000
14	Huntington Hospital — Hartley		
15	capital outlay and renovations		
16	for JCAH accreditation .....	—	3,000,000
17	Spencer Hospital—Hartley capi-		
18	tal outlay and renovations for		
19	certification .....	—	750,000
20	Contingency for repairs and al-		
21	terations, equipment, emerg-		
22	ency services and miscellan-		
23	eous .....	—	500,000
24	DD and Chronic Mentally Ill		
25	Group Homes—Hartley capital		
26	outlay and renovations .....	—	2,250,000



27	Andrew S. Rowan—Capital out-		
28	lay and renovations for certifi-		
29	cation, life safety and energy		
30	conservation .....	—	375,000
31	Hopemont Hospital—Capital out-		
32	lay and renovations for certifi-		
33	cation, life safety and energy		
34	conservation .....	—	300,000
35	Fairmont Emergency — Capital		
36	outlay and renovations for certi-		
37	fication, life safety and energy		
38	conservation .....	—	40,000
39	Denmar Hospital—Capital outlay		
40	and renovations for certifica-		
41	tion, life safety and energy con-		
42	servation .....	—	50,000
43	Adolescent Residential Treat-		
44	ment Center .....	—	1,270,000
45	Pinecrest Hospital—Capital out-		
46	lay and renovations for certifi-		
47	cation, life safety and energy		
48	conservation .....	—	870,000
49	DD and Chronic Mentally Ill		
50	Group Homes—Hartley capital		
51	outlay and renovations .....	—	1,924,000
52	Total .....	\$ —	\$ 12,213,640

53 The total amount of this appropriation shall be paid  
 54 from the Hospital Services Revenue Account Special  
 55 Fund created by the 1981 Legislature (WV Code 16-1-15a).

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

63 Any unexpended balances remaining at the close of fis-  
 64 cal year 1983-84 for the prior-appropriated and brought-

65 forward items of this account are hereby reappropriated  
 66 for expenditure in fiscal year 1984-85. The unexpended  
 67 balances of the items "Huntington Hospital, Capital Out-  
 68 lay and Renovations—\$750,000" and "Huntington Hospi-  
 69 tal, Capital Outlay—\$1,800,000", as originally appropriated  
 70 in this account (then designated Acct. No. 8491-12) in  
 71 fiscal year 1982-83 and as herein reappropriated for ex-  
 72 penditure during fiscal year 1984-85, are hereby redesi-  
 73 gnated as to purpose and shall be exepndable in fiscal year  
 74 1984-85 for "Adolescent Residential Treatment Center—  
 75 Barboursville Area" by the State Health Department.

107—*Health Care Cost Review Authority*

Acct. No. 8510

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	.....\$	283,837		\$	1,108,054
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2 The above appropriation item is to be expended in ac-  
 3 cordance with and pursuant to the provisions of Chapter  
 4 102, Acts of the Legislature, Regular Session, 1983, and  
 5 from the special revolving fund designated "Health Care  
 6 Cost Review Fund."

108—*West Virginia Hospital Finance Authority*

Acct. No. 8520

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	.....\$	—		\$	1,000
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2 The total amount of this appropriation shall be paid  
 3 from Special Revenue Fund out of fees and collections  
 4 as provided by Enrolled Committee Substitute for Senate  
 5 Bill 585, Regular Session, 1984.

6 Special funds in excess of the amount herein appro-  
 7 priated may be made available by budget amendments  
 8 upon request of the Commissioner of Finance and Ad-  
 9 ministration and the approval of the Governor.

109—*Geological and Economic Survey*

Acct. No. 8589

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	_____ \$ —	\$ 40,000
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2 The above appropriation shall be used in accordance  
3 with Chapter 95, Acts of the Legislature, Regular Session,  
4 1983.

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

Acct. No. 8830

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	_____ \$ —	\$ 545,000
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2 The total amount of this appropriation shall be paid  
3 from the nonrevolving Capital Improvement Fund created  
4 by the 1959 Legislature, as amended.

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

Acct. No. 8835

## TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	_____ \$ —	\$ 2,386,000
2	Capital Building Repairs and		
3	Alterations	_____ —	4,200,000
4	(Supplements Operating Budget		
5	at Colleges and Universities)		
6	Miscellaneous Campus Develop-		
7	ment Projects	_____ —	1,300,000
8	Planning Fund	_____ —	1,000,000
9	(To be used for project planning		
10	and design)		
11	Concord College Campus Devel-		
12	opment	_____ —	500,000

13 The total amount of this appropriation shall be paid  
 14 from the Special Capital Improvement Fund created by  
 15 the 1971 Legislature. Projects are to be paid on a cash  
 16 basis and made available from the date of passage.

17 Any unexpended balances remaining in prior years and  
 18 1983-84 appropriations at the close of the fiscal year 1983-  
 19 84 are hereby reappropriated for expenditure during the  
 20 fiscal year 1984-85 with the exception of accounts 8835-37  
 21 and 8835-65 which shall be expired at the close of the  
 22 fiscal year 1983-84.

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

Acct. No. 8840

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service .....	\$ —	\$ 1,644,000
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2 The total amount of this appropriation shall be paid  
 3 from the nonrevolving Capital Improvement Fund created  
 4 by the 1959 Legislature, as amended.

113—*Board of Regents—State System Registration Fee*

*Revenue Bond Construction Fund*

Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years  
 2 and 1983-84 appropriations are hereby reappropriated  
 3 for expenditure during fiscal year 1984-85.

114—*Board of Regents—State System Tuition Fee*

*Special Capital Improvement Fund*

*(Capital Improvement and Bond Retirement Fund)*

Acct. No. 8855

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service and Reserve ..	\$ —	\$ 3,888,000
2	Building and Campus Renewal ...	—	7,750,000

3	(Formula based allocation of		
4	funds for major building re-		
5	pairs, renovations and upgrad-		
6	ing, HVAC, mechanical and		
7	electrical system upgrading and		
8	replacement; roof replacement;		
9	grounds improvements; and		
10	similar projects)		
11	West Virginia University Campus		
12	Development .....	—	3,000,000
13	(West Virginia University Medi-		
14	cal Center Building Renewal/		
15	Renovation)		
16	Jackson's Mill .....	—	200,000
17	(Capital Outlay—		
18	Building Repairs, Reno-		
19	vations and Upgrading)		
20	Potomac State College		
21	Campus Development .....	—	140,000
22	Marshall University Campus		
23	Development .....	—	2,000,000
24	(Science Building (Phase II)—		
25	Supplement)		
26	Marshall University—		
27	Fairfield Stadium .....	—	100,000
28	(Seat Demolition)		
29	Concord College Campus Develop-		
30	ment .....	—	100,000
31	(Remodel Administration Build-		
32	ing Auditorium)		
33	West Virginia State College		
34	Campus Development .....	—	225,000
35	(President's Residence)		
36	West Virginia Network for		
37	Educational Telecomputing .....	—	1,725,000
38	(System Upgrade and computer		
39	equipment acquisitions)		

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

44 Any unexpended balances remaining in prior years  
 45 and in the 1983-84 appropriations are hereby reappro-  
 46 priated for expenditure in fiscal year 1984-85, with the  
 47 exception of account 8855-05 which shall expire at the  
 48 close of the fiscal year 1983-84.

115—*Workers' Compensation Commissioner*

Acct. No. 9000

TO BE PAID FROM WORKERS' COMPENSATION FUND

1	Personal Services .....	\$ —	\$ 7,754,069
2	Current Expenses .....	—	5,148,689
3	Equipment .....	—	601,375
4	Social Security Matching .....	—	529,142
5	Public Employees Retirement		
6	Matching .....	—	750,277
7	Public Employees Health		
8	Insurance .....	—	774,927
9	Employees Excess Liability Fund	—	571,799
	Personal Services .....	120,494	
	Current Expenses .....	369,586	
	Equipment .....	44,000	
	Social Security Matching .....	8,383	
	Public Employees Retire-		
	ment Matching .....	11,336	
	Public Employees Health		
	Insurance .....	18,000	
10	Total .....	\$ —	\$ 16,130,278

11 There is hereby authorized to be paid out of the above  
 12 appropriation for "Current Expenses" the amount neces-  
 13 sary for the premiums on bonds given by the State  
 14 Treasurer as Bond Custodian for the protection of the  
 15 Workers' Compensation Fund. This sum shall be trans-  
 16 ferred to the Board of Insurance.

116—*West Virginia Alcohol Beverage Control Commissioner*

Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services .....	\$ —	\$ 9,133,956
2	Current Expenses .....	—	6,008,920

3	Repairs and Alterations .....	—	72,800
4	Equipment .....	—	109,000
5	Social Security Matching .....	—	633,250
6	Public Employees Retirement		
7	Matching .....	—	856,351
8	Public Employees Health		
9	Insurance .....	—	1,317,507
10	Total.....	\$ —	\$ 18,131,784

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

13 The above appropriations include the salary of the  
14 commissioner, salaries of store personnel, store inspec-  
15 tors, store operating expenses and equipment; and sal-  
16 aries, expenses and equipment of administration offices.

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

117—*West Virginia University—Medical Center*

Acct. No. 9280

TO BE PAID FROM MEDICAL SCHOOL FUND

1	Educational Programs ..\$	—	\$ —	\$ 39,128,205
	Personal Services .....	—	23,208,205	
	Current Expenses .....	—	10,784,000	
	Repairs and			
	Alterations .....	—	1,324,000	
	Equipment .....	—	1,422,000	
	Family Practice			
	Residency Support	—	890,000	
	Community Hospital			
	Residency Support	—	1,000,000	
	Capital Outlay .....	—	500,000	
2	Total.....	\$ —	—	\$ 39,128,205

3 Any unexpended balances remaining in the appropria-  
4 tions for "Capital Outlay" and the 1983-84 appropria-  
5 tion for the West Virginia University Medical Center at  
6 the close of the fiscal year 1983-84 are hereby reappro-  
7 priated for expenditure during fiscal year 1984-85.

8 Any balances so reappropriated may be transferred  
9 and credited to the 1984-85 accounts.

118—*Board of Regents—West Virginia University*  
*Medical Center Revenue Fund*

Acct. No. 9285

1	Hospital Operations .....	\$ —	\$ 65,934,000
2	Capital Outlay .....	—	3,200,000
3	Total.....	\$ —	\$ 69,134,000

4 Any unexpended balance remaining in the appropria-  
5 tion for "Board of Regents-West Virginia University  
6 Medical Center Revenue Fund" at the close of the fiscal  
7 year 1983-84 is hereby reappropriated for expenditure  
8 during the fiscal year 1984-85.

9 Any balances so reappropriated may be transferred and  
10 credited to the 1984-85 accounts: *Provided*, That in the  
11 event the Board of Regents is divested of the management  
12 and operational responsibilities for university hospital,  
13 the spending authority in the amount of \$69,134,000 for  
14 university hospital operations and capital outlay shall be  
15 rescinded.

1 **Sec. 5.—Awards for claims against the state.**—There are  
2 hereby appropriated, for the remainder of the fiscal year  
3 1983-84 and to remain in effect until June 30, 1985, from  
4 the funds as designated, in the amounts as specified, and  
5 for the claimants as named in Enrolled House Bill  
6 1407, Acts, Legislature, Regular Session, 1984—crime vic-  
7 tim reparation fund of \$150,395.81 for payment of claims  
8 against the state.

9 There are hereby appropriated for the fiscal year 1984-  
10 85, from the funds as designated, in the amounts as speci-  
11 fied, and for the claimants as named in Enrolled House  
12 Bills 1373 and 1406, Acts, Legislature, Regular Session,  
13 1984—total general revenue funds of \$862,110.16, state  
14 road funds of \$614,259.55 and special revenue funds of  
15 \$76,937.44 for payment of claims against the state.



1 **Sec. 6.—Reappropriations.**—Any unexpended balances  
 2 under Title II, Section 1, remaining at the close of fiscal  
 3 year 1983-84 in the following accounts are hereby reappro-  
 4 priated for expenditure during fiscal year 1984-85: Acct.  
 5 No. 4201-18 (73) and Acct. No. 5661-13 (74). Further, the  
 6 unexpended balances of such Acct. No. 4201-18 (73), as  
 7 originally appropriated in Sec. 4, Item VI of the Budget  
 8 Act for 1972-73 and brought forward, are hereby redesi-  
 9 gnated as to purpose and shall be expendable in fiscal year  
 10 1984-85 for "Reimbursement to Community Mental Health  
 11 and Mental Retardation Centers" by the State Health  
 12 Department.

1 **Sec. 7. Appropriations from surplus revenue.**—The  
 2 following items are hereby appropriated from the state  
 3 fund, general revenue, and are to be available for expen-  
 4 diture during the fiscal year 1984-85 out of surplus funds  
 5 only, subject to the terms and conditions set forth in this  
 6 section.

7 It is the intent and mandate of this Legislature that the  
 8 following appropriations made by this section shall be  
 9 payable only from the surplus accrued as of June 30, 1984.

10 In the event that the surplus revenues as of June 30,  
 11 1984 are not sufficient to meet all of the appropriations  
 12 made by this section, then the appropriations shall be  
 13 made in the following order of priority and shall be avail-  
 14 able, only to the extent of the total actual surplus accrued  
 15 as of June 30, 1984.

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

Acct. No. 2950

1 Salary Equalization—Total .....\$ — \$ 29,000,000

120—*Water Development Authority*

Acct. No. 5670

1 Capital Outlay—Sewer .....\$ — \$ 8,200,000  
 2 (To match federal funds)

1 **Sec. 8.—Supplemental and deficiency appropriations**  
 2 **from revenue sharing trust fund.**—The following items

3 are hereby appropriated from the Revenue Sharing Trust  
4 Fund to be available for expenditure from date of passage.

121—*Revenue Sharing Trust Fund—Department of Natural Resources*

Acct. No. 9725

1 Capital Outlay—Cacapon State Park—Total...\$ 100,000

122—*Revenue Sharing Trust Fund—West Virginia Public Legal Services Council*

Acct. No. 9791

1 Appointed Counsel—Total.....\$ 190,657

1 **Sec. 9.—Reappropriations— revenue sharing trust**  
2 **fund.**—Any unexpended balances to the appropriations  
3 made by and under Sec. 8 of the 1973 Budget Act and Sup-  
4 plementary Acts to Chapter 10, Acts of the Legislature,  
5 Regular Session, 1973, under Sec. 5 of the 1974 Budget  
6 Act, and Supplementary Acts to Chapter Two, Acts of the  
7 Legislature, Regular Session, 1975, under Sec. 7, Acts of  
8 the Legislature, Regular Session, 1976, and Supplementary  
9 Acts of Chapter 7, Acts of the Legislature, Regular Ses-  
10 sion, 1976, and as amended in Sec. 7 of the 1977 Budget  
11 Act, 1978 Budget Act, 1979 Budget Act, 1980 Budget Act,  
12 1981 Budget Act, 1982 Budget Act, and the 1983 Budget  
13 Act, except for Acct. No. 9721-10 item “Partnership  
14 Grants — Wyoming County Multipurpose Facility” —  
15 \$1,219,300 — is hereby redesignated, as to purpose, for  
16 “Board of Regents — West Virginia Southern Community  
17 College Center, Pineville, West Virginia” and except for  
18 the appropriation under Chapter 7, Acts of the Legislature,  
19 Regular Session, 1976, and Sec. 7 thereof, for Acct. No.  
20 9710 and item “Weirton Area Mental Health Area —  
21 \$1,600,000” which item is hereby reduced by \$40,000 and  
22 with such \$40,000 being designated in new item, as to  
23 purpose, for “Brooke County Opportunity Center con-  
24 struction project”, at the close of the fiscal year 1983-84  
25 are hereby reappropriated for expenditure and as newly  
26 designated during the fiscal year 1984-85.

- 1 **Sec. 10.—Appropriations from federal block grants.—**  
 2 The following items are hereby appropriated from Fed-  
 3 eral Block Grants and to be available for expenditure  
 4 during the fiscal year 1984-85.

123—*Office of Economic and Community Development—  
 Community Development*

Acct. No. 8029

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services .....	\$ 123,100
2	Current Expenses .....	198,172
3	Equipment .....	3,277
4	To Local Entities .....	17,428,443
		<hr/>
5	Total .....	\$ 17,752,992

124—*Office of Economic and Community Development—  
 Community Service*

Acct. No. 8031

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services .....	\$ 100,085
2	Current Expenses .....	254,830
3	Equipment .....	3,350
4	To Local Entities .....	3,834,023
		<hr/>
5	Total .....	\$ 4,192,288

125—*State Department of Education—Education Grant*

Acct. No. 8242

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services .....	\$ 854,355
2	Current Expenses .....	432,318
3	Repairs and Alterations .....	100
4	To Local Entities .....	34,987,520
		<hr/>
5	Total .....	\$ 36,274,293

126—*State Health Department—Primary Care*

Acct. No. 8501

## TO BE PAID FROM FEDERAL FUNDS

1	To Local Entities—Total .....	\$ 5,500,000
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127—*State Health Department—Maternal and Child Health*

Acct. No. 8502

## TO BE PAID FROM FEDERAL FUNDS

1	Personal Services .....	\$ 506,277
2	Current Expenses .....	6,562,725
3	Equipment .....	33,720
4	Total .....	\$ 7,102,722

128—*State Health Department—Adcohol, Drug Abuse and  
Mental Health*

Acct. No. 8503

## TO BE PAID FROM FEDERAL FUNDS

1	Personal Services .....	\$ 365,935
2	Current Expenses .....	5,029,940
3	Equipment .....	29,500
4	Total .....	\$ 5,425,375

129—*State Health Department—Preventive Health*

Acct. No. 8506

## TO BE PAID FROM FEDERAL FUNDS

1	Personal Services .....	\$ 297,412
2	Current Expenses .....	815,758
3	Equipment .....	9,565
4	Total .....	\$ 1,122,735

130—*Department of Human Services—Energy Assistance*

Acct. No. 9147

## TO BE PAID FROM FEDERAL FUNDS

1	Personal Services .....	\$ 2,010,426
2	Current Expenses .....	14,666,301
3	Transfer to State Spending Units .....	1,852,969
4	<b>Total</b> .....	<b>\$ 18,529,696</b>

131—*Department of Human Services—Social Service*

Acct. No. 9161

## TO BE PAID FROM FEDERAL FUNDS

1	Personal Services .....	\$ 8,458,060
2	Current Expenses .....	15,338,351
3	<b>Total</b> .....	<b>\$ 23,796,411</b>

1 **Sec. 11.—Appropriations from countercyclical fiscal**  
 2 **assistance trust fund.**—Moneys received by the State of  
 3 West Virginia pursuant to the provisions of the “Public  
 4 Works Employment Act of 1976; Title II of Public Law  
 5 94-369,” as amended by the “Intergovernmental Antire-  
 6 cession Assistance Act of 1977; Public Law 95-30,” enacted  
 7 by the Congress of the United States, shall be deposited  
 8 in the state treasury and kept in a separate account en-  
 9 titled “Countercyclical Fiscal Assistance Trust Fund.”

10 Any part of or all such amounts as deposited, including  
 11 deposits through fiscal year one thousand nine hundred  
 12 eighty-five, are hereby appropriated and may be trans-  
 13 ferred to any other accounts in the Governor’s Office or  
 14 to any other departments of state government for dis-  
 15 bursement or expenditure.

1 **Sec. 12.—Special revenue appropriations.**—There is  
 2 hereby appropriated for expenditure during the fiscal year  
 3 one thousand nine hundred eighty-five, appropriations  
 4 made by general law from special revenue which are not  
 5 paid into the state fund as general revenue under the  
 6 provisions of Chapter 12, Article 2, Section 2 of the Code  
 7 of West Virginia, one thousand nine hundred thirty-one:

8 *Provided*, That none of the moneys so appropriated  
9 by this section shall be available for expenditure  
10 except in compliance with and in conformity to the pro-  
11 visions of Chapter 12, Articles 2 and 3, and Chapter 5A,  
12 Article 2 of the Code of West Virginia, unless the spend-  
13 ing unit has filed with the state director of the budget, the  
14 state auditor and the legislative auditor prior to the be-  
15 ginning of each fiscal year:

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

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

1 **Sec. 13.—State improvement fund appropriations.—**  
2 Bequests or donations of nonpublic funds, received by the  
3 Governor on behalf of the State during the fiscal year  
4 one thousand nine hundred eighty-five, for the purpose  
5 of making studies and recommendations relative to im-  
6 provements of the administration and management of  
7 spending units in the executive branch of state govern-  
8 ment, shall be deposited in the state treasury in a separate  
9 account therein designated "State Improvement Fund".

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

1 **Sec. 14.—Specific funds and collection accounts.—**A  
2 fund or collection account, which by law is dedicated to a  
3 specific use, is hereby appropriated in sufficient amount  
4 to meet all lawful demands upon the fund or collection  
5 account, and shall be expended according to the pro-  
6 visions of Chapter 12, Article 3 of the Code of West  
7 Virginia.

1 **Sec. 15.—Appropriations for refunding erroneous pay-**  
2 **ment.—**Money that has been erroneously paid into the

3 state treasury is hereby appropriated out of the fund  
4 into which it was paid, for refund to the proper person.

5 When the officer authorized by law to collect money for  
6 the state finds that a sum has been erroneously paid, he  
7 shall issue his requisition upon the Auditor for the re-  
8 funding of the proper amount. The Auditor shall issue  
9 his warrant to the Treasurer and the Treasurer shall  
10 pay the warrant out of the fund into which the amount  
11 was originally paid.

1 **Sec. 16.—Sinking fund deficiencies.**—There is hereby  
2 appropriated to the Governor a sufficient amount to meet  
3 any deficiencies that may arise in the mortgage finance  
4 bond insurance fund of the West Virginia Housing Devel-  
5 opment Fund which is under the supervision and control  
6 of the state municipal bond commission as provided by  
7 Chapter 31, Article 18, Section 20b of the Code of West Vir-  
8 ginia, one thousand nine hundred thirty-one, as amended,  
9 or in the funds of the state municipal bond commission be-  
10 cause of the failure of any state agency for either general  
11 obligations or revenue bonds or any local taxing district  
12 for general obligations bonds to remit funds necessary for  
13 the payment of interest and sinking fund requirements.  
14 The Governor is authorized to transfer from time to time  
15 such amounts to the state municipal bond commission as  
16 may be necessary for these purposes.

17 The state municipal bond commission shall reimburse  
18 the State of West Virginia through the Governor from the  
19 first remittance collected from the West Virginia Housing  
20 Development Fund or from any state agency or local tax-  
21 ing district for which the Governor advanced funds, with  
22 interest at the rate carried by the bonds for the security  
23 or payment of which the advance was made.

1 **Sec. 17.—Appropriations to pay costs of publication of**  
2 **delinquent corporations.**—There is hereby appropriated  
3 out of state fund, General Revenue, out of funds not  
4 otherwise appropriated, to be paid upon requisition of the  
5 Auditor and/or the Governor, as the case may be, a sum  
6 sufficient to pay the cost of publication of delinquent cor-

7 porations as provided by Chapter 11, Article 12, Sections  
8 84 and 86 of the Code of West Virginia.

1 **Sec. 18.—Appropriations for local governments.—**  
2 There is hereby appropriated for payment to counties,  
3 districts and municipal corporations such amounts as will  
4 be necessary to pay taxes due counties, districts and  
5 municipal corporations and which have been paid into  
6 the treasury:

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

1 **Sec. 19.—Total appropriations.—**Where only a total  
2 sum is appropriated to a spending unit, that total sum  
3 shall include personal services, current expenses and capi-  
4 tal outlay, except as otherwise provided in TITLE I,  
5 Sec. 3.

1 **Sec. 20.—General school fund.—**The balance of the pro-  
2 ceeds of the general school fund remaining after the  
3 payment of the appropriations made by this act is appro-  
4 priated for expenditure in accordance with Chapter 18,  
5 Article 9A, Section 16 of the Code of West Virginia.

### **TITLE 3. ADMINISTRATION.**

- §1. Appropriations conditional.
- §2. Constitutionality.

1 **Section 1.—Appropriations conditional.—**The expendi-  
2 ture of the appropriations made by this act, except those  
3 appropriations made to the legislative and judicial  
4 branches of the state government are conditioned upon  
5 the compliance by the spending unit with the require-  
6 ments of Chapter 5A, Article 2 of the Code of West  
7 Virginia.

8 Where former spending units have been absorbed by or  
9 combined with other spending units by acts of this Legis-  
10 lature, it is the intent of this act that reappropriation  
11 shall be to the succeeding or later spending unit created  
12 unless otherwise indicated.



1     **Sec. 2.—Constitutionality.**—If any part of this act is de-  
2 clared unconstitutional by a court of competent jurisdic-  
3 tion, its decision shall not affect any portion of this act  
4 which remains, but the remaining portion shall be in full  
5 force and effect as if the portion declared unconstitu-  
6 tional had never been a part of the act.

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## CHAPTER 23

(Com. Sub. for H. B. 1675—By Delegate Gilliam)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article three of said chapter; to amend and reenact sections eight, twenty, twenty-five and twenty-six, article four of said chapter; to amend and reenact section twelve, article eight of said chapter; to further amend said article eight by adding thereto a new section, designated section twelve-c; to amend and reenact sections one and four, article eight-a of said chapter; to amend article eighteen, chapter forty-seven by adding thereto a new section, designated section four-a, all relating to general definitions; defining a "bankers' bank"; redefining "branch bank"; relating to the general powers and duties of the West Virginia board of banking and financial institutions; authorizing said board to approve or disapprove applications to incorporate and organize bankers' banks; further authorizing said board to exempt a bankers' bank from the provisions of chapter thirty-one-a; relating to qualifying shares of the directors of state-chartered banks; relating to stockholder examining committees; relating to limitations on dividend payments; exemptions from such limitations if approved by the commissioner of banking; relating to limitations on a state-chartered banking institution's investment in a bankers' bank; relating to the establishment of branch banks; phasing in removal of limitations and restrictions

on branch banking; removing provisions that limit any bank to ten percent of the total deposits of all banking institutions in this state; relating to loan origination offices; said offices being permissible if loans approved and made at bank's principal office or branch bank; relating to elimination of certain restrictions on bank holding companies, including provision that limits any bank holding company to ten percent of the total deposits of all banking institutions in this state and the provision that prohibits a bank holding company from acquiring a savings and loan association or other depository institution; relating to statement of purpose of Legislature with regard to limitation of acquisition of twenty percent of total deposits in state.

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

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

## **Chapter**

**31A. Banks and Banking.**

**47. Regulation of Trade.**

## **CHAPTER 31A. BANKS AND BANKING.**

### **Article**

**1. General Provisions and Definitions.**

**3. Board of Banking and Financial Institutions.**

**4. Banking Institutions and Service Generally.**

**8. Hearings; Administrative Procedures; Judicial Review; Unlawful Acts; Penalties.**

**8A. Acquisition of Bank Shares.**

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.****§31A-1-2. Definitions.**

1 As used in this chapter, unless the context in which used  
2 plainly requires a different meaning:

3 (a) The word "action," in the sense of a judicial proceed-  
4 ing, means any proceeding in a court of competent jurisdiction  
5 in which rights are adjudicated and determined and shall em-  
6 brace, and include recoupment, counterclaim, setoff and other  
7 related, similar and summary proceedings;

8 (b) The words "bank" and "banking institution" mean a  
9 corporation heretofore or hereafter chartered to conduct a  
10 banking business under the laws of West Virginia or an  
11 association heretofore or hereafter authorized to conduct a  
12 banking business in West Virginia under the laws of the  
13 United States and having its principal office in this state  
14 and shall embrace and include a trust company or an institu-  
15 tion combining banking and trust company facilities, functions  
16 and services so chartered or authorized to conduct such  
17 business in this state, and shall include industrial banks  
18 authorized by article seven, chapter thirty-one of this code,  
19 subject to the limitations therein imposed on such industrial  
20 banks and further subject to the limitations imposed thereon  
21 in this article;

22 (c) The words "bankers' bank" mean a banking institution,  
23 insured by the Federal Deposit Insurance Corporation, the  
24 stock of which is owned exclusively by banks and other  
25 depository institutions, and such banking institution and all  
26 subsidiaries thereof are engaged exclusively in providing ser-  
27 vices for banks and other depository institutions and their  
28 officers, directors and employees;

29 (d) The term "banking business" means the functions,  
30 services and activities contained, detailed and embraced in  
31 sections thirteen and fourteen, article four of this chapter,  
32 and as elsewhere defined by law;

33 (e) The word "board" means the West Virginia board of  
34 banking and financial institutions;

35 (f) The words "branch bank" mean an office or other  
36 place at which a bank performs any or all banking business.  
37 For purposes of this chapter, a branch bank does not in-  
38 clude:

39 (1) A bank's principal place of business;

40 (2) Any customer bank communication terminals installed  
41 and operated pursuant to section twelve-b, article eight of  
42 this chapter; and

43 (3) Any loan origination office authorized by section  
44 twelve-c, article eight of this chapter:

45 (g) The words "commissioner" or "commissioner of bank-  
46 ing" mean the commissioner of banking of West Virginia;

47 (h) The word "community" means a city, town or other  
48 incorporated area, or, where not so incorporated, a trading  
49 area;

50 (i) The word "department" means the department of bank-  
51 ing of West Virginia;

52 (j) The words "deputy commissioner" or "deputy com-  
53 missioner of banking" mean the deputy commissioner of  
54 banking of West Virginia;

55 (k) The word "fiduciary" means any trustee, agent, execu-  
56 tor, administrator, curator, committee, guardian or conserva-  
57 tor, special commissioner, receiver, trustee in bankruptcy,  
58 assignee for creditors, or any holder of a similar position of  
59 trust or responsibility;

60 (l) The words "financial institutions" mean banks, build-  
61 ing and loan associations, industrial banks, industrial loan  
62 companies, supervised lenders, credit unions and all other  
63 similar institutions, whether persons, firms or corporations,  
64 which are by law under the jurisdiction and supervision of  
65 the commissioner of banking;

66 (m) The word "officer" when referring to any financial  
67 institution, means any person designated as such in the by-  
68 laws and includes, whether or not so designated, any execu-  
69 tive officer, the chairman of the board of directors, the  
70 chairman of the executive committee, and any trust officer,

71 assistant vice president, assistant treasurer, assistant secretary,  
72 assistant trust officer, assistant cashier, assistant comptroller,  
73 or any other person who performs the duties appropriate  
74 to those offices, and the terms "executive officer" as herein  
75 used, when referring to banking institutions, mean an  
76 officer of a bank whose duties involve regular, active and  
77 substantial participation in the daily operations of such insti-  
78 tution and who, by virtue of his position, has both a voice  
79 in the formulation of the policy of the bank and responsibility  
80 for implementation of the policy, such responsibility of and  
81 functions performed by the individual, and not his title or  
82 office, being determinative of whether he is an "executive  
83 officer";

84 (n) The words "person" or "persons" mean any individual,  
85 partnership, society, association, firm, institution, company,  
86 public or private corporation, state, governmental agency,  
87 bureau, department, division or instrumentality, political sub-  
88 division, county commission, municipality, trust, syndicate,  
89 estate or any other legal entity whatsoever, formed, created  
90 or existing under the laws of this state or any other jurisdic-  
91 tion;

92 (o) The words "safe-deposit box" mean a safe-deposit box,  
93 vault or other safe-deposit receptacle maintained by a lessor  
94 bank, and the rules relating thereto apply to property or  
95 documents kept therein in the bank's vault under the joint con-  
96 trol of lessor and lessee;

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

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

### ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

#### §31A-3-2. General powers and duties.

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

- 3 (1) Regulate its own procedure and practice;
- 4 (2) Promulgate reasonable rules and regulations to imple-  
5 ment any provision of this article, such rules and regulations  
6 to be promulgated in accordance with the provisions of article  
7 three, chapter twenty-nine-a of this code;
- 8 (3) Advise the commissioner in all matters within his juris-  
9 diction;
- 10 (4) Study the organization, programs and services of fi-  
11 nancial institutions and the laws relating thereto in this state  
12 and in other jurisdictions, and to report and recommend to  
13 the governor and the Legislature all such changes and amend-  
14 ments in laws, policies and procedures relating thereto as may  
15 be by it deemed proper; and
- 16 (5) Grant permission and authority to a financial insti-  
17 tution:
  - 18 (A) To participate in a public agency hereafter created un-  
19 der the laws of this state or of the United States, the purpose  
20 of which is to afford advantages or safeguards to financial in-  
21 stitutions or to depositors therein, and to comply with all  
22 lawful requirements and conditions imposed upon such par-  
23 ticipants;
  - 24 (B) To engage in any financial institution activity, services,  
25 procedures and practices in which financial institutions of the  
26 same type subject to the jurisdiction of the federal govern-  
27 ment may hereafter be authorized by federal laws, rules or  
28 regulations to engage, notwithstanding any contrary provision  
29 of this code; and
  - 30 (C) To pay interest on demand deposits of the United States  
31 or any agency thereof, if the payment of such interest shall  
32 be permitted under any applicable federal law, rule or regula-  
33 tion.
- 34 Any permission and authority granted by the board pur-  
35 suant to this subdivision (5) shall cease and terminate upon  
36 the adjournment of the next regular session of the Legislature,  
37 unless the Legislature shall at such session enact legislation  
38 authorizing the financial institution participation, activity,

39 services and procedures or payment of interest with respect to  
40 which such permission and authority were granted, in which  
41 event such permission and authority shall continue in effect  
42 until the effective date of such legislation.

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

45 (1) Restrict the withdrawal of deposits from any financial  
46 institution when, in the judgment of the board, extraordinary  
47 circumstances make such restrictions necessary for the protec-  
48 tion of creditors of and depositors in the affected institutions;

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

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

62 (4) Approve or disapprove applications to incorporate and  
63 organize state-chartered bankers' banks in accordance with the  
64 provisions of sections six and seven, article four of this chap-  
65 ter;

66 (5) Exempt a bankers' bank from any provision of this  
67 chapter if the board finds that such provision is inconsistent  
68 with the purpose for which a bankers' bank is incorporated  
69 and organized and that the welfare of the public or any bank-  
70 ing institution or other financial institution would not be  
71 jeopardized thereby;

72 (6) Revoke the certificate of authority, permit, certifi-  
73 cate or license of any state banking institution to engage in  
74 business in this state if such institution shall fail or refuse to  
75 comply with any order of the commissioner entered pursuant

76 to the provisions of paragraph (A) or (B), subdivision (14),  
77 subsection (c), section four, article two of this chapter, or at  
78 the board's election to direct the commissioner to apply to  
79 any court having jurisdiction for a prohibitory or mandatory  
80 injunction or other appropriate remedy to compel obedience  
81 to such order;

82 (7) Suspend or remove a director, officer or employee of  
83 any financial institution who is or becomes ineligible to hold  
84 such position under any provision of law or rule and regula-  
85 tion or order, or who willfully disregards or fails to comply  
86 with any order of the board or commissioner made and entered  
87 in accordance with the provisions of this chapter or who is  
88 dishonest or grossly incompetent in the conduct of financial  
89 institution business;

90 (8) To receive from state banking institutions applications  
91 to establish branch banks by the purchase of the business and  
92 assets and assumption of the liabilities of, or merger or con-  
93 solidation with, another banking institution, or by the con-  
94 struction, lease or acquisition of branch bank facilities in an  
95 unbanked area; examine and investigate such applications, to  
96 hold hearings thereon, and to approve or disapprove such  
97 applications, all in accordance with section twelve, article  
98 eight of this chapter;

99 (9) Approve or disapprove the application of any state  
100 bank to purchase the business and assets and assume the lia-  
101 bilities of, or merge or consolidate with, another state banking  
102 institution in accordance with the provisions of section seven,  
103 article seven of this chapter;

104 (10) Approve or disapprove the application of any state  
105 bank to purchase the business and assets and assume the lia-  
106 bilities of a national banking association, or merge or con-  
107 solidate with a national banking association to form a result-  
108 ing state bank in accordance with the provisions of section  
109 seven, article seven of this chapter;

110 (11) In addition to any authority granted pursuant to  
111 section twelve, article eight of this chapter, incident to the  
112 approval of an application pursuant to subdivision (7) or sub-



113 division (8) of this subsection (b), permit the bank the appli-  
114 cation of which is so approved to operate its banking business  
115 under its name from the premises of the bank the business and  
116 assets of which have been purchased and the liabilities of  
117 which have been assumed by such applicant bank or with  
118 which such applicant bank has merged or consolidated:  
119 *Provided*, That such permission may be granted only if the  
120 board has made the findings required by subsection (f), sec-  
121 tion three of this article and such applicant bank has no com-  
122 mon directors or officers nor common ownership of stock ex-  
123 ceeding ten percent of total outstanding voting stock with  
124 the bank whose business and assets are being purchased and  
125 liabilities assumed, or with whom such applicant bank is be-  
126 ing merged; and

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

#### ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-8. Directors, their qualifications and oaths.

§31A-4-20. Stockholders' annual meeting; financial statement; appointment,  
duties and report of examining committee; employment of ac-  
countants; examiners may require presence of executive or  
examining committee.

§31A-4-25. Dividends; limitations; penal provisions.

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

#### §31A-4-8. Directors, their qualifications and oaths.

1 For every state-chartered banking institution there shall  
2 be a board of not less than five nor more than twenty-five  
3 directors, who shall meet at least once each month and who  
4 shall have power to do, or cause to be done, all things that  
5 are proper to be done by the banking institution; and a  
6 majority of whom shall at all times be residents of this state.  
7 Every such director shall own capital stock in the banking in-  
8 stitution of which he is a director. Said director must own

9 shares in the aggregate par value of not less than five hundred  
10 dollars, an exception being that if a bank holding company  
11 has control of that banking institution, shares owned by a  
12 director of the subsidiary bank in the controlling bank holding  
13 company will satisfy the requirements of this section: *Pro-*  
14 *vided,* That the director owns, in his own right, common or  
15 preferred stock of the controlling bank holding company in  
16 an amount equal to or greater than any one of the following:  
17 (i) Aggregate par value of five hundred dollars; (ii) aggregate  
18 shareholders' equity of five hundred dollars; or (iii) aggregate  
19 fair market value of five hundred dollars. Determination  
20 of the fair market value of the controlling bank holding com-  
21 pany's stock shall be based upon the value of that stock on the  
22 date it was purchased or on the date the person became a direc-  
23 tor, whichever is greater. If a bank holding company controls  
24 more than one bank subsidiary, a director owning at least five  
25 hundred dollars of the shares of a bank holding company is  
26 qualified, if otherwise permitted by applicable law, to serve  
27 as a director of every bank subsidiary controlled by that  
28 bank holding company. Before entering on the discharge of  
29 his duties as such director, he shall take an oath that he  
30 will, so far as the duty devolves upon him, diligently and  
31 honestly administer the affairs of the banking institution,  
32 and that he will not knowingly or willingly permit to be  
33 violated any of the provisions of the laws of this state  
34 relative to banking and banking institutions, and that the  
35 stock standing in his name upon the books of the banking  
36 institution is not hypothecated or pledged in any way as  
37 security for loans obtained from or debts owing to the banking  
38 institution of which he is a director, and that the number  
39 of shares necessary to qualify a stockholder to be a director  
40 are not now, and shall not at any time while he serves  
41 as a director, be pledged or hypothecated in any manner  
42 for any debt or obligation of the director, or any other  
43 person; which oath subscribed by him and certified by the  
44 officer before whom it was taken shall be filed and  
45 preserved in the office of the commissioner of banking.  
46 Should a director fail to subscribe to the oath herein pro-  
47 vided within sixty days after notice of his election, or at  
48 any time after qualifying as such, sell or dispose of, or

49 in any manner hypothecate or pledge as security for a debt  
50 or obligation, such qualifying shares, or any number  
51 thereof, necessary for his qualification, thereupon the remain-  
52 ing directors shall elect another director in his stead. No  
53 person shall serve as a director of any banking institution who  
54 has evidenced personal dishonesty and unfitness to serve as  
55 such director by his conduct or practice with another financial  
56 institution which resulted in a substantial financial loss or  
57 damage thereto or who has been convicted of any crime in-  
58 volving personal dishonesty.

**§31A-4-20. Stockholders' annual meeting; financial statement; ap-  
pointment, duties and report of examining com-  
mittee; employment of accountants; examiners may  
require presence of executive or examining com-  
mittee.**

1 The stockholders of each state banking institution shall  
2 meet annually and at such annual meeting it shall be the  
3 duty of the cashier or other executive officer of such bank-  
4 ing institution to prepare and submit to the stockholders a  
5 clear and concise statement of the financial condition of  
6 the corporation as of the close of business on the last day of  
7 the month next preceding. At such meeting, the stockholders  
8 present in person or by proxy shall elect an examining com-  
9 mittee composed of not less than three nor more than five  
10 persons, each of whom shall be a stockholder either in such  
11 banking institution, or, if such banking institution is con-  
12 trolled by a bank holding company, in that bank holding  
13 company. At such time or times as it may be directed to do  
14 so by the written request of the board of directors or the  
15 commissioner of banking, such committee shall immediately  
16 proceed to examine the condition of the bank and, upon  
17 completion of such examination, shall file its report in writ-  
18 ing with the board of directors. Such report shall set forth  
19 in detail all items included in the assets of the bank which  
20 the committee has reason to believe are not of the value  
21 at which they appear on the books and records of the bank,  
22 and shall give the value of each of such items according  
23 to its judgment. The board of directors shall cause such  
24 report to be retained as a part of the records of the bank

25 and shall transmit a duly authenticated copy thereof to the  
26 commissioner of banking. With the consent and approval  
27 of the stockholders, such committee may employ registered  
28 or certified public accountants to make such examination  
29 or make the same in conjunction with any official examina-  
30 tion made by any supervisory authority. Any official ex-  
31 aminer of the department of banking may require the presence  
32 of the examining committee or the executive committee dur-  
33 ing his examination.

**§31A-4-25. Dividends; limitations; penal provisions.**

1 (a) The directors of any state-chartered banking in-  
2 stitution may quarterly, semiannually or annually, declare  
3 a dividend of so much of the net profits of that banking  
4 institution as they shall judge expedient, except that until  
5 the surplus fund of such banking institution shall equal  
6 its common stock, no dividends shall be declared unless there  
7 has been carried to the surplus fund not less than one-  
8 tenth part of that banking institution's net profits of the  
9 preceding half year in the case of quarterly or semiannual  
10 dividends, or not less than one-tenth part of its net profits  
11 of the preceding two consecutive half-year periods in the  
12 case of annual dividends;

13 (b) The prior approval of the commissioner of banking  
14 shall be required if the total of all dividends declared by  
15 such banking institution in any calendar year shall exceed  
16 the total of its net profits of that year combined with its  
17 retained net profits of the preceding two years;

18 (c) For the purpose of this section the term "net prof-  
19 fits" shall mean the remainder of all earnings from current  
20 operations plus actual recoveries on loans and investments  
21 and other assets, after deducting from the total thereof, all  
22 current operation expenses, actual losses and all federal and  
23 state taxes;

24 (d) Any director voting to declare any dividend, in viola-  
25 tion of the provisions of this section, shall be personally liable  
26 to the creditors of such banking institution for any loss  
27 occasioned thereby, and shall be guilty of a misdemeanor.

**§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.**

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

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

19 (3) For the purposes of this subsection:

20 (A) The term "loans and extensions of credit" shall in-  
21 clude all direct or indirect advances of funds to a person made  
22 on the basis of any obligation of that person to repay the  
23 funds or repayable from specific property pledged by or on  
24 behalf of the person and to the extent specified by the com-  
25 missioner of banking, such terms shall also include any lia-  
26 bility of a state-chartered banking institution to advance funds  
27 to or on behalf of a person pursuant to a contractual com-  
28 mitment; and

29 (B) The term "person" shall include an individual, part-  
30 nership, society, association, firm, institution, company, public  
31 or private corporation, state, governmental agency, bureau,  
32 department, division or instrumentality, political subdivision,  
33 county commission, municipality, trust, syndicate, estate or

34 any other legal entity whatsoever, formed, created or existing  
35 under the laws of this state or any other jurisdiction.

36 (4) The limitations contained in this subsection shall be sub-  
37 ject to the following exceptions:

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

42 (B) The purchase of bankers' acceptances of the kind de-  
43 scribed in section thirteen of the Federal Reserve Act and  
44 issued by other banks shall not be subject to any limitation  
45 based on capital and surplus;

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

56 (D) Loans or extensions of credit secured by bonds, notes,  
57 certificates of indebtedness or treasury bills of the United  
58 States or by other such obligations fully guaranteed as to  
59 principal and interest by the United States or by bonds, notes,  
60 certificates of indebtedness which are general obligations of  
61 the state of West Virginia or by other such obligations fully  
62 guaranteed as to principal and interest by the state of West  
63 Virginia, shall not be subject to any limitation based on capi-  
64 tal and surplus;

65 (E) Loans or extensions of credit to or secured by uncon-  
66 ditional takeout commitments or guarantees of any depart-  
67 ment, agency, bureau, board, commission or establishment of  
68 the United States or of the state of West Virginia or any cor-  
69 poration wholly owned directly or indirectly by the United

70 States shall not be subject to any limitation based on capital  
71 and surplus;

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

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

82 (H) (i) Loans and extensions of credit arising from the  
83 discount of negotiable or nonnegotiable installment consumer  
84 paper which carries a full recourse endorsement or uncon-  
85 ditional guarantee by the person transferring the paper shall  
86 be subject under this section to a maximum limitation equal  
87 to twenty-five percent of such capital and surplus, notwith-  
88 standing the collateral requirements set forth in subdivision  
89 (2) of this subsection.

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

101 (I) (i) Loans and extensions of credit secured by ship-  
102 ping documents or instruments transferring or securing title  
103 covering livestock or giving a lien on livestock when the  
104 market value of the livestock securing the obligation is not  
105 at any time less than one hundred fifteen percent of the face  
106 amount of the note covered, shall be subject under this

107 section, notwithstanding the collateral requirements set forth  
108 in subdivision (2) of this subsection, to a maximum limitation  
109 equal to twenty-five percent of such capital and surplus.

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

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

121 (K) Loans or extensions of credit to a corporation own-  
122 ing the property in which that state-chartered banking in-  
123 stitution is located, when that state-chartered banking institu-  
124 tion has an unimpaired capital and surplus of not less than  
125 one million dollars or when approved in writing by the com-  
126 missioner of banking, shall not be subject to any limitation  
127 based on capital and surplus.

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

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

140 (C) The commissioner of banking also shall have au-  
141 thority to determine when a loan putatively made to a  
142 person shall for purposes of this subsection be attributed  
143 to another person.



144 (b) (1) Except as hereinafter provided or otherwise per-  
145 mitted by law, nothing herein contained shall authorize the  
146 purchase by a state-chartered banking institution for its own  
147 account of any shares of stock of any corporation: *Provided*,  
148 That a state-chartered banking institution may purchase and  
149 sell securities and stock without recourse, solely upon the  
150 order and for the account of customers.

151 (2) In no event shall the total amount of investment  
152 securities of any one obligor or maker held by a state-chartered  
153 banking institution for its own account, exceed fifteen percent  
154 of the unimpaired capital and unimpaired surplus of that  
155 state-chartered banking institution.

156 (3) For purposes of this subsection:

157 (A) The term "investment securities" shall include market-  
158 able obligations, evidencing indebtedness of any person in  
159 the form of stocks, bonds, notes and/or debentures; "in-  
160 vestment securities" may be further defined by regulation of  
161 the commissioner of banking; and

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

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

171 (A) Obligations of the United States;

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

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

178 (D) Obligations which are insured by the secretary of

179 housing and urban development under Title XI of the National  
180 Housing Act (12USC §§1749aaa et seq.);

181 (E) Obligations which are insured by the secretary of  
182 housing and urban development hereafter in this sentence  
183 referred to as the "secretary" pursuant to section 207 of  
184 the National Housing Act (12 USC §1713), if the debentures  
185 to be issued in payment of such insured obligations are  
186 guaranteed as to principal and interest by the United States;

187 (F) Obligations, participations or other instruments of  
188 or issued by the federal national mortgage association or  
189 the government national mortgage association, or mortgages,  
190 obligations or other securities which are or ever have been  
191 sold by the federal home loan mortgage corporation pursuant  
192 to Section 305 or Section 306 of the Federal Home Loan  
193 Mortgage Corporation Act (12 USC §1454 or §1455);

194 (G) Obligations of the federal financing bank;

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

197 (I) Obligations of the environmental financing authority;

198 (J) Such obligations of any local public agency (as de-  
199 fined in Section 110(h) of the Housing Act of 1949 (42 USC  
200 §1460 (h)) as are secured by an agreement between the  
201 local public agency and the secretary of housing and urban  
202 development in which the local public agency agrees to  
203 borrow from said secretary and said secretary agrees to lend  
204 to said local public agency, moneys in an aggregate amount  
205 which (together with any other moneys irrevocably committed  
206 to the payment of interest on such obligations) will suffice  
207 to pay, when due, the interest on all installments (in-  
208 cluding the final installment) of the principal of such obliga-  
209 tions, which moneys under the terms of said agreement are  
210 required to be used for such payments;

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

214 (i) By an agreement between the public housing agency  
215 and the secretary in which the public housing agency agrees  
216 to borrow from the secretary, and the secretary agrees to  
217 lend to the public housing agency, prior to the maturity of  
218 such obligations, moneys in an amount which, together with  
219 any other moneys irrevocably committed to the payment of  
220 interest on such obligations, will suffice to pay the principal  
221 of such obligations with interest to maturity thereon, which  
222 moneys under the terms of said agreement are required to be  
223 used for the purpose of paying the principal of and the  
224 interest on such obligations at their maturity;

225 (ii) By a pledge of annual contributions under an annual  
226 contributions contract between such public housing agency  
227 and the secretary if such contract shall contain the covenant  
228 by the secretary which is authorized by subsection (b), Section  
229 22 (Section 6 (g) (42 USC § 1421a(b)) of the United States  
230 Housing Act of 1937, as amended, and if the maximum  
231 sum and the maximum period specified in such contract pur-  
232 suant to said subsection (b), section 22, shall not be less than  
233 the annual amount and the period for payment which are re-  
234 quisite to provide for the payment when due of all install-  
235 ments of principal and interest on such obligations; or

236 (iii) By a pledge of both annual contributions under an  
237 annual contributions contract containing the covenant by the  
238 secretary which is authorized by Section 6 (g) of the United  
239 States Housing Act of 1937 (42 USC §1437d (g)) and a loan  
240 under an agreement between the local public housing agency  
241 and the secretary in which the public housing agency agrees  
242 to borrow from the secretary, and the secretary agrees to  
243 lend to the public housing agency, prior to the maturity of  
244 the obligations involved, moneys in an amount which, to-  
245 gether with any other moneys irrevocably committed under  
246 the annual contributions contract to the payment of prin-  
247 cipal and interest on such obligations will suffice to pro-  
248 vide for the payment when due of all installments of princi-  
249 pal and interest on such obligations, which moneys under  
250 the terms of the agreement are required to be used for  
251 the purpose of paying the principal and interest on such obli-  
252 gations at their maturity; and

253 (L) Obligations of a corporation owning the property in  
254 which that state-chartered banking institution is located when  
255 that state-chartered banking institution has an unimpaired  
256 capital and surplus of not less than one million dollars or  
257 when approved in writing by the commissioner of banking.

258 (5) Notwithstanding any other provision in this subsection,  
259 a state-chartered banking institution may purchase for its  
260 own account shares of stock issued by a corporation autho-  
261 rized to be created pursuant to Title IX of the Housing and  
262 Urban Development Act of 1968 (42 USC §§3931 et seq.)  
263 and may make investments in a partnership, limited partner-  
264 ship or joint venture formed pursuant to section 907 (a) or  
265 907 (c) of that act (42 USC §3937 (a) or (c)), and may  
266 purchase shares of stock issued by any West Virginia housing  
267 corporation and may make investments in loans and com-  
268 mitments for loans to any such corporation: *Provided*, That  
269 in no event shall the total amount of such stock held for its  
270 own account and such investments in loans and commitments  
271 made by the state-chartered banking institution exceed at any  
272 time five percent of the unimpaired capital and unimpaired  
273 surplus of that state-chartered banking institution.

274 (6) Notwithstanding any other provision in this subsection,  
275 a state-chartered banking institution may purchase, for its  
276 own account, shares of stock of small business investment  
277 companies chartered under the laws of this state, which are  
278 licensed under the act of Congress known as the "Small  
279 Business Investment Act of 1958," as amended, and of  
280 business development corporations created and organized under  
281 the act of the Legislature known as the "West Virginia Busi-  
282 ness Development Corporation Act," as amended: *Provided*,  
283 That in no event shall any such state-chartered banking  
284 institution hold shares of stock in small business investment  
285 companies and/or business development corporations in any  
286 amount aggregating more than fifteen percent of the unim-  
287 paired capital and unimpaired surplus of that state-chartered  
288 banking institution.

289 (7) Notwithstanding any other provision of this subsection,  
290 a state-chartered banking institution may purchase for its  
291 own account shares of stock of a bankers' bank or a bank

292 holding company which owns or controls such bankers' bank,  
293 but in no event shall the total amount of such stock held  
294 by such state-chartered banking institution exceed at any  
295 time fifteen percent of the unimpaired capital and unimpaired  
296 surplus of that state-chartered banking institution and in no  
297 event shall the purchase of such stock result in that state-  
298 chartered banking institution acquiring more than twenty per-  
299 cent of any class of voting securities of such bankers' bank  
300 or of the bank holding company which owns or control such  
301 bankers' bank.

302 (8) The commissioner of banking may prescribe rules  
303 and regulations to administer and carry out the purposes of  
304 this subsection, including rules and regulations to define  
305 or further define terms used in this subsection and to  
306 establish limits or requirements other than those specified  
307 in this subsection for particular classes or categories of in-  
308 vestment securities.

309 (c) No officer or director of any banking institution or  
310 the commissioner of banking or any employee of the depart-  
311 ment of banking shall borrow, directly or indirectly, from the  
312 banking institution with which he is connected, or which  
313 is subject to examination by the commissioner of banking,  
314 any sum of money without the prior approval of a majority  
315 of the board of directors or discount committee of the bank-  
316 ing institution, or of any duly constituted committee whose  
317 duties include those usually performed by a discount com-  
318 mittee, embodied in a resolution adopted by a majority vote  
319 of such board or committee, exclusive of the director to  
320 whom the loan is made. If any officer, clerk or other employee  
321 of any bank shall own or control a majority of the stock of  
322 any other corporation, a loan to such corporation shall,  
323 for the purpose of this section, constitute a loan to such of-  
324 ficer, clerk or other employee.

325 (d) Securities purchased by a banking institution shall be  
326 entered upon the books of the bank at actual cost. For the  
327 purpose of calculating the undivided profits applicable to the  
328 payment of dividends, securities shall not be valued at a  
329 valuation exceeding their present cost as determined by amor-  
330 tization, that is, by deducting from the cost of a security

331 purchased at a premium, and charging to profit and loss a  
332 sum sufficient to bring it to par at maturity.

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

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

§31A-8-12c. Loan origination offices permitted.

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

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

7 Any banking institution which on January one, one thousand  
8 nine hundred eighty-four, was authorized to operate an off-  
9 premises walk-in or drive-in facility, pursuant to the law  
10 then in effect, may, as of the effective date of this act,  
11 operate such facility as a branch bank and it shall not be  
12 necessary, for the continued operation of such branch bank,  
13 to obtain additional approvals, notwithstanding the provisions  
14 of subsection (d) of this section and subdivision (6), sub-  
15 section (b), section two, article three of this chapter.

16 (b) Except for a bank holding company, it shall be un-  
17 lawful for any individual, partnership, society, association,  
18 firm, institution, trust, syndicate, public or private corpora-  
19 tion, or any other legal entity, or combination of entities  
20 acting in concert, to directly or indirectly own, control or  
21 hold with power to vote, twenty-five percent or more of the  
22 voting shares of each of two or more banks, or to control  
23 in any manner the election of a majority of the directors of  
24 two or more banks.

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

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

29 (A) After the effective date of this act, within the county  
30 in which that banking institution's principal office is located  
31 or within the county in which that banking institution had  
32 prior to January first, one thousand nine hundred eighty-four,  
33 established a branch bank, pursuant to subdivision (2) of  
34 this subsection;

35 (B) After January first, one thousand nine hundred eighty-  
36 seven, within the county in which that banking institution's  
37 principal office is located or within any county contiguous to  
38 the county in which that banking institution's principal office  
39 is located; and

40 (C) After January first, one thousand nine hundred ninety-  
41 one, within any county in this state; or

42 (2) The purchase of the business and assets and assump-  
43 tion of the liabilities of, or merger or consolidation with,  
44 another banking institution.

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

52 (e) The principal office of a banking institution as of the  
53 effective date of this act shall continue to be the principal  
54 office of such banking institution for purposes of establishing  
55 branch banks under this section, notwithstanding any sub-  
56 sequent change in the location of such banking institution's  
57 principal office.

58 (f) Any banking institution which is authorized to estab-  
59 lish branch banks pursuant to this section may provide the  
60 same banking services and exercise the same powers at each  
61 such branch bank as may be provided and exercised at its  
62 principal banking house.

63 (g) The board shall, upon receipt of any application to  
64 establish a branch bank, provide notice of such application  
65 to all banking institutions. A banking institution may, with-

66 in ten days after receipt of such notice, file a petition to  
67 intervene and shall, if it so files such petition, thereupon  
68 become a party to any hearing relating thereto before the  
69 board.

70 (h) The commissioner shall prescribe the form of the  
71 application for a branch bank and shall collect an examination  
72 and investigation fee of one thousand dollars for each filed  
73 application for a branch bank that is to be established by  
74 the construction, lease or acquisition of a branch bank  
75 facility, and two thousand five hundred dollars for a branch  
76 bank that is to be established by the purchase of the business  
77 and assets and assumption of the liabilities of, or merger or  
78 consolidation with another banking institution. The board  
79 shall complete the examination and investigation within nine-  
80 ty days from the date on which such application and fee are  
81 received, unless the board requests in writing additional in-  
82 formation and disclosures concerning the proposed branch  
83 bank from the applicant banking institution, in which event  
84 such ninety-day period shall be extended for an additional  
85 period of thirty days plus the number of days between the  
86 date of such request and the date such additional information  
87 and disclosures are received.

88 (i) Upon completion of the examination and investiga-  
89 tion with respect to such application, the board shall, if  
90 a hearing be required pursuant to subsection (j) of this sec-  
91 tion, forthwith give notice and hold a hearing pursuant to  
92 the following provisions:

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

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



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

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

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

124 (2) Local conditions assure reasonable promise of suc-  
125 cessful operation of the proposed branch bank and of those  
126 banks and branches thereof already established in the com-  
127 munity;

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

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

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

138 (6) The establishment of the proposed branch bank would  
139 not have the effect in any section of the state of substantially  
140 lessening competition, nor tend to create a monopoly or in  
141 any other manner be in restraint of trade, unless the anti-

142 competitive effects of the establishment of that proposed  
143 branch bank are clearly outweighed in the public interest  
144 by the probable effect of the establishment of the proposed  
145 branch bank in meeting the convenience and needs of the  
146 community to be served by that proposed branch bank.

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

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

161 (m) Any violation of any provision of this section shall  
162 constitute a misdemeanor offense punishable by applicable  
163 penalties as provided in section fifteen, article eight of this  
164 chapter.

#### **§31A-8-12c. Loan origination offices permitted.**

1 Origination of loans by employees or agents of a banking  
2 institution at offices other than that banking institution's  
3 principal office or branch bank is permitted: *Provided*, That  
4 any such loans originating at said office are approved and  
5 made at the banking institution's principal place of business  
6 or branch bank.

#### **ARTICLE 8A. ACQUISITION OF BANK SHARES.**

§31A-8A-1. Legislative findings and purpose.

§31A-8A-4. Acquisition of bank shares; when prior notification of board  
necessary; exemptions.

#### **§31A-8A-1. Legislative findings and purpose.**

1 After a review of the structure of banking organizations

2 in the state of West Virginia, and after full consideration of  
3 the complex issues involved, the Legislature hereby finds  
4 and determines that:

5 (a) Well managed and financially sound banking institu-  
6 tions are essential to the financial well-being of the citizens,  
7 and the promotion of the future economic and industrial  
8 growth and development of this state;

9 (b) The formation of bank holding companies will strength-  
10 en and supplement traditional banking services and facilitate  
11 the development of the type of banking institutions that are  
12 necessary for the economic and industrial growth and develop-  
13 ment of this state;

14 (c) It is in the best interests of this state and its citizens  
15 for the board to have the power and authority to disapprove  
16 the acquisition of a bank by a bank holding company when  
17 the board determines that such acquisition would result in a  
18 monopoly, substantially lessen competition, or be contrary  
19 to the best interests of the shareholders or customers of the  
20 bank involved; and

21 (d) The deposits of the citizens of this state are a sub-  
22 stantial and valuable resource which should serve the eco-  
23 nomic and industrial growth and development needs, and  
24 the consumer needs of the citizens of this state; and since  
25 the board could not effectively make a determination that  
26 the control of deposits of the citizens of this state by bank  
27 holding companies with any banking subsidiaries located  
28 outside this state would be used for the above enumerated  
29 local needs of this state's citizenry, a bank holding company  
30 with any bank subsidiary located outside this state shall be  
31 prohibited from acquiring, directly or indirectly, five percent  
32 or more of the interest in, or assets of, any bank or bank  
33 holding company located in this state.

**§31A-8A-4. Acquisition of bank shares; when prior notification of  
board necessary; exemptions.**

1 (a) It shall be unlawful, prior to ninety days following  
2 the date of the submission to the board of complete, true  
3 and accurate copies of the reports required under federal

4 laws or regulations pursuant to Title 12, United States  
5 Code, §§1841-1850 (being the act of Congress entitled the  
6 Bank Holding Company Act of 1956, as amended), and the  
7 payment of an examination and investigation fee to the board  
8 of two thousand five hundred dollars:

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

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

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

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

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

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

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

27 (1) Shares acquired by a bank:

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

33 (B) In the regular course of securing or collecting a debt  
34 previously contracted in good faith, but any shares acquired  
35 after the effective date of this act in securing or collecting  
36 any such previously contracted debt shall be disposed of  
37 within a period of five years from the date on which they  
38 were acquired; or

39 (2) Additional shares acquired by a bank holding com-  
40 any in a bank in which such bank holding company owned or  
41 controlled a majority of the voting shares prior to such  
42 acquisition. For the purpose of the preceding sentence, bank  
43 shares acquired after the effective date of this act shall not  
44 be deemed to have been acquired in good faith in a fiduciary  
45 capacity if the acquiring bank or company has sole discre-  
46 tionary authority to exercise voting rights with respect there-  
47 to, but in such instances acquisitions may be made without  
48 prior notice to the board if the board, upon notice and  
49 submission of information in form and content as it shall  
50 approve, filed within ninety days after the shares are acquired,  
51 approved retention or, if retention is disapproved, the ac-  
52 quiring bank disposes of the shares or its sole discretionary  
53 voting rights within five years after issuance of the order  
54 of disapproval.

55 (c) If, within ninety days from the date of submission  
56 pursuant to subsection (a) of this section, after notice and  
57 a hearing pursuant to the provisions of section three, article  
58 three of this chapter, the board enters an order disapproving  
59 the proposed action described in subdivision (1), (2), (3),  
60 (4), (5) or (6), subsection (a) of this section, it shall be  
61 unlawful to take such action. The board shall disapprove  
62 the proposed action described in subdivision (1), (2), (3), (4),  
63 (5) or (6), subsection (a) of this section on the following  
64 grounds:

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

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

76 (3) Taking into consideration the financial and managerial

77 resources and further prospects of the company or com-  
78 panies and the banks concerned, the action would be contrary  
79 to the best interests of the shareholders or customers of the  
80 bank whose shares are affected by such action.

81 (d) Notwithstanding any other provisions of this section,  
82 no proposed action described in subdivision (1), (2), (3),  
83 (4), (5) or (6), subsection (a) of this section, shall be approved  
84 if such approval will permit any bank holding company or  
85 any subsidiary thereof to acquire, directly or indirectly, five  
86 percent or more of the interest in or assets of a bank or bank  
87 holding company located in this state if the operations of any  
88 banking subsidiary of such bank holding company are located  
89 outside this state.

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

#### CHAPTER 47. REGULATION OF TRADE.

#### ARTICLE 18. ANTI-TRUST ACT; RESTRAINT OF TRADE.

##### §47-18-4a. Establishment of deposit limitation.

1 After a review of the structure of depository institutions  
2 in the state of West Virginia, the Legislature hereby deter-  
3 mines that:

4 (a) It is in the best interest of this state and its citizens  
5 to foster and encourage healthy competition among its do-  
6 mestic depository institutions;

7 (b) Excessive concentration or control of the deposit re-  
8 sources of this state is antithetical to fostering a competitive  
9 environment; and

10 (c) Therefore, to control more than twenty percent of the  
11 deposits of all the depository institutions (the term "de-  
12 pository institutions" shall include, but is not limited to, state-  
13 chartered banking institutions, national banking associations,  
14 federal savings and loan associations, bank holding companies,  
15 savings and loan holding companies, federal savings banks,  
16 state-chartered industrial loan companies, state-chartered

- 17 building and loan associations, state-chartered credit unions  
18 and federally-chartered credit unions), of this state is anti-  
19 competitive and unlawful.

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## CHAPTER 24

(S. B. 26—By Senator Palumbo)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article fifteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the equal right of blind and disabled persons to use public facilities; trained dogs permitted in public facilities.

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

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

### ARTICLE 15. WHITE CANE LAW.

#### §5-15-4. Equal right to use public facilities.

- 1 (a) Blind and disabled persons shall have the same  
2 right as persons with normal sight to the full and free use  
3 of the highways, roads, streets, sidewalks, walkways, pub-  
4 lic buildings, public facilities and other public places.
- 5 (b) Blind and disabled persons are entitled to full and  
6 equal accommodations, advantages, facilities and privi-  
7 leges of all common carriers, airplanes, motor vehicles,  
8 railroad trains, motor buses, streetcars, boats or any other  
9 public conveyances or modes of transportation, hotels,  
10 lodging places, restaurants, other places of public accom-  
11 modation, amusement or resort, and other places to which  
12 the general public is invited, subject only to the condi-  
13 tions and limitations established by law and applicable  
14 alike to all persons.

15 (c) Every blind person, every deaf person and every  
16 person who is physically disabled because of any neuro-  
17 logical, muscular or skeletal disorder that causes weak-  
18 ness or inability to perform any physical function shall  
19 have the right to be accompanied by a guide or support  
20 dog, wearing a harness, especially trained for the purpose,  
21 which serves as a guide, leader, listener or support in any  
22 of the places, accommodations or conveyances specified in  
23 subsection (b) of this section without being required to  
24 pay an extra charge for the admission of such guide or  
25 support dog, but the blind, deaf or disabled person shall,  
26 upon request, present for inspection credentials issued by  
27 an accredited school for training guide or support dogs.  
28 The blind, deaf or disabled person shall be liable for any  
29 damage done by such guide or support dog to the prem-  
30 ises or facilities or to persons using such premises or  
31 facilities. Such dog shall not occupy a seat in any public  
32 conveyance and shall be upon a leash while using the  
33 facilities of a common carrier.

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## CHAPTER 25

(S. B. 744—Originating in the Senate Committee on Finance)

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[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections one, two and four, article two, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the issuance of refunding bonds by counties, municipal corporations, school districts and independent school districts; providing for the refunding of outstanding bonds in advance of the maturity or redemption thereof and for terms and conditions under which such bonds may be issued in an amount, or bearing interest at a rate, which exceeds the amount or interest rate of the bonds being refunded.



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

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

**ARTICLE 2. REFUNDING BONDS.**

§13-2-1. What political divisions may issue refunding bonds; when issued.

§13-2-2. Terms of refunding bonds; time, place and amount of payments.

§13-2-4. Disposition of bonds; cancellation of original bonds.

**§13-2-1. What political divisions may issue refunding bonds; when issued.**

1 Any county, by and through its county commission,  
2 either for and on behalf of the county or for and on  
3 behalf of any magisterial district or group of magisterial  
4 districts therein; any municipal corporation, by and  
5 through its council or other governing body in lieu there-  
6 of; or any school district, or any independent school dis-  
7 trict, by and through its board of education or other fiscal  
8 body in lieu thereof, may, in the manner and subject to  
9 the limitations and conditions contained in this article,  
10 issue and sell its bonds for the purpose of refunding the  
11 bonds of such political division which have become or  
12 are becoming due and payable and for the discharge of  
13 which there are or will be when the bonds mature no  
14 funds or insufficient funds available; or when, in the  
15 opinion of the governing body of the political division  
16 obligated to the payment of such bonds, the rate of levy  
17 necessary to provide funds for their discharge will impose  
18 excessive taxes upon the taxpayers of such political di-  
19 vision; or for the purpose of providing for the payment of  
20 outstanding bonds in advance of the maturity or redemp-  
21 tion thereof through the making of a deposit as provided  
22 in section four of this article; or for the purpose of  
23 rendering outstanding bonds not due when such outstand-  
24 ing bonds are to be presented for payment before maturity  
25 by the exercise of option provisions or by agreement  
26 with the holders thereof. Such refunding bonds may be  
27 issued bearing the same or a higher or lesser rate of  
28 interest than the bonds to be refunded. Except to the

29 extent that additional taxes for such purpose have been  
30 approved by the voters and the levy of such additional  
31 taxes provided for in the manner stipulated in sections  
32 seven through fourteen of article one of this chapter,  
33 no such refunding bonds shall be issued bearing a higher  
34 rate of interest than the bonds being refunded or shall  
35 be issued in a principal amount exceeding the principal  
36 amount of the bonds to be refunded unless the amount  
37 of debt service payable on such refunding bonds in each  
38 year is equal to or less than the amount of taxes expected  
39 to be available therefor as shall be certified by the chair-  
40 man of the West Virginia municipal bond commission  
41 prior to the issuance of such refunding bonds. The  
42 amount of taxes expected to be available in each year  
43 for purposes of this section shall be based upon the rates  
44 of levy stipulated in the order directing the election at  
45 which the issuance of the bonds being refunded was  
46 approved by the voters and upon the most recent  
47 assessed valuation of the affected property prior to such  
48 election. In the event only a portion of the bonds provided  
49 for such order are being refunded or have been issued, an  
50 appropriate reduction shall be made in the amount of  
51 taxes expected to be available based upon the actual debt  
52 service requirements of bonds which have been issued  
53 but are not being refunded and the estimated debt service  
54 requirements of bonds which have not been issued.

**§13-2-2. Terms of refunding bonds; time, place and amount  
of payments.**

1 Upon determining to issue such refunding bonds, the  
2 governing body of such political division shall, by resolu-  
3 tion, authorize the issuance of such bonds in an amount  
4 not exceeding the principal amount permitted by section  
5 one of this article, fix the date thereof, the rate of interest  
6 which such bonds shall bear, payable semiannually, and  
7 require that the bonds shall bear, payable at the office  
8 of the state treasurer and at such other place or places  
9 as the body issuing the same may designate. Such reso-  
10 lution shall also provide that such bonds shall mature  
11 serially in annual installments beginning not more than  
12 three years after the date thereof, and the last of such

13 annual installments shall mature in not exceeding thirty-  
14 four years from the date of such bonds. The amount pay-  
15 able in each year on the refunding bonds, together with  
16 any unrefunded or unissued bonds of the prior issue, may  
17 be so fixed that, when the amount of interest is added  
18 to the principal amount to be paid during the respective  
19 years, the total amount payable in each year shall be as  
20 nearly equal as practicable; or such bonds may be made  
21 payable in annual installments as nearly equal in prin-  
22 cipal as may be practicable.

**§13-2-4. Disposition of bonds; cancellation of original bonds.**

1 The governing body of the political subdivision is-  
2 suing bonds under this article shall first offer the  
3 bonds to the secretary of state for purchase by any of  
4 the governmental agencies of the state authorized by  
5 law to purchase such bonds, in accordance with the  
6 provisions of section nine, article three of this chapter.  
7 If the state does not purchase any or all of the bonds so  
8 offered, the governing body may sell the same or any part  
9 thereof and collect the proceeds, or such bonds may be  
10 delivered to the holder or holders of the bonds to be  
11 refunded in exchange therefor.

12 It is the intention of this article to authorize political  
13 divisions to issue bonds for the purpose of refunding  
14 outstanding bonds without thereby contracting any addi-  
15 tional indebtedness, and it shall be conditional upon the  
16 delivery of any refunding bonds that a like principal  
17 amount of the bonds to be refunded be cancelled and paid  
18 simultaneously with the issuance and delivery of such  
19 refunding bonds.

20 For all purposes of this section, bonds shall be consid-  
21 ered to have been cancelled and paid in advance of their  
22 due date or date of redemption if there shall have been  
23 deposited with the West Virginia municipal bond com-  
24 mission either:

25 (a) Moneys, sufficient to pay when and as due all  
26 amounts of principal and interest payable on such bonds;  
27 or

28 (b) Direct obligations of the United States of America  
29 or the state of West Virginia, or obligations fully and  
30 irrevocably secured as to the payment of both principal  
31 and interest by such direct obligations, the payment on  
32 which when due will provide moneys, sufficient to pay  
33 when and as due all amounts of principal and interest  
34 payable on such bonds.

35 All such amounts shall be set aside and held in trust  
36 and irrevocably dedicated solely to the payment of such  
37 bonds, except that amount in excess of the amounts re-  
38 quired for the payment of the bonds so refunded may be  
39 applied to the payment of costs related to the issuance,  
40 carrying, insuring or servicing the refunding bonds, in-  
41 cluding costs of credit or market enhancement services,  
42 such as letters of credit, remarketing arrangements and  
43 similar services. Any amount deposited pursuant to this  
44 section may include amounts already held on deposit by  
45 the West Virginia municipal bond commission for the  
46 payment of the bonds to be refunded.

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## CHAPTER 26

(Com. Sub. for H. B. 1205—By Delegate McKinley and Delegate Knight)

[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the capitol building commission.

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

That section one, article eight, 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 8. CAPITOL BUILDING COMMISSION.

#### §4-8-1. Creation; composition; qualifications of members.

1 There is continued a capitol building commission, herein-

2 after referred to as the commission, which shall be composed  
3 of five members who shall be appointed by the governor with  
4 the advice and consent of the Senate on the first day of  
5 July, one thousand nine hundred seventy-six, plus the com-  
6 missioner of the department of finance and administration  
7 who shall be a nonvoting member. No more than three mem-  
8 bers shall be of the same political party. One member shall be  
9 an architect selected from three persons recommended by  
10 the board of architects, one member shall be a registered  
11 professional engineer selected from three persons recommended  
12 by the board of engineers, one member shall be selected  
13 from three persons who are interested in the historical beauty,  
14 value and preservation of the capitol building recommended  
15 by the commissioner of culture and history and two members  
16 shall be selected from the public at large.

17 After having conducted a performance audit through its  
18 joint committee on government operations, pursuant to section  
19 nine, article ten, chapter four of this code, the Legislature  
20 hereby finds and declares that the capitol building commission  
21 should be continued and reestablished. Accordingly, notwith-  
22 standing the provisions of section four, article ten, chapter  
23 four of this code, the capitol building commission shall con-  
24 tinue to exist until the first day of July, one thousand nine  
25 hundred eighty-six.

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## CHAPTER 27

(S. B. 85—By Senator Boettner)

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[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section three, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, four, five and eight, article six of said chapter forty-nine; to further amend said article six by adding thereto a new section, designated section ten; to amend and reenact sections five and eight, article six-a of said chapter forty-nine; to further amend said chapter forty-

nine by adding thereto two new articles, designated articles six-c and six-d, relating to child abuse and neglect generally; defining certain terms; providing for the representation of parties in abuse and neglect proceedings; allowing a preadjudication improvement period; describing the rights of parties during hearing; requiring abuse and neglect proceeding to be given priority on court docket; providing for transcript on appeal; describing the procedure for transferring temporary custody of a child alleged to be abused or neglected; authorizing the temporary removal of children not alleged to be abused or neglected under certain circumstances; providing for preliminary hearing and discretionary improvement period; authorizing child protection service worker to take custody of child or children without court order under certain circumstances; establishing a procedure for medical and mental examinations during proceedings; authorizing persons to apply for an order of custody for medical examination prior to the filing of a petition to obtain evidence of abuse or neglect; describing the dispositions available to the court upon a finding of abuse or neglect; setting forth conditions under which a court shall determine that there is no reasonable likelihood that conditions of abuse or neglect can be substantially corrected; empowering the court to grant an improvement period as an alternative disposition; providing for foster care review by courts and the annual reporting to the court as to placements of children; describing the duties of the prosecuting attorney in cases of child abuse and neglect and requiring an annual report to the grand jury regarding the discharge of such duties; providing reporting procedures for cases of child abuse and neglect and requiring the department of human services to forward reports of serious injury to law-enforcement agencies, prosecuting attorneys or the coroner or the medical examiner; defining the misdemeanor offense of failure to report cases of abuse or failure to forward reports of serious injury and establishing a penalty therefor; creating a children's trust fund for child abuse and neglect prevention; setting forth legislative findings and intent; defining certain terms; establishing the children's trust fund and providing for the deposit of money received by the fund with the state

treasurer; authorizing the commissioner of the department of human services to transmit requisitions to the auditor upon a majority vote of the members appointed and then serving on the commission on children and youth; describing the purposes for which funds may be used; providing a procedure for taxpayers to contribute a portion of any refund from their personal income tax; describing the duties of the commission on children and youth in relation to the children's trust fund and the additional responsibilities of the commission; providing for the commission on children and youth making recommendations to the governor and the Legislature; creating the West Virginia child protective services act; setting forth purpose and intent; requiring the department of human services to develop a family case plan for families placed upon an improvement period or referred to the department following an adjudication and finding of abuse and neglect; describing the contents of a family case plan and an expanded workers' case plan; and requiring the commissioner of the department of human services within the limits of available funds to establish certain programs and services.

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

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

**Article**

1. Purposes; Definitions.
6. Procedure in Cases of Child Neglect and Abuse.
- 6A. Reports of Children Suspected to be Abused or Neglected.
- 6C. Children's Trust Fund for Child Abuse and Neglect Prevention.
- 6D. West Virginia Child Protective Services Act.

**ARTICLE 1. PURPOSES; DEFINITIONS.**

**§49-1-3. Definitions relating to abuse and neglect.**

1 (a) "Abused child" means a child whose health or  
2 welfare is harmed or threatened by:

3 (1) A parent, guardian or custodian who knowingly or  
4 intentionally inflicts, attempts to inflict, or knowingly  
5 allows another person to inflict, physical injury, or  
6 substantial mental or emotional injury, upon the child or  
7 another child in the home; or

8 (2) Sexual abuse or sexual exploitation.

9 In addition to its broader meaning, physical injury may  
10 include an injury to the child as a result of excessive  
11 corporal punishment.

12 (b) "Abusing parent" means a parent, guardian or  
13 other custodian, regardless of his or her age, whose conduct,  
14 as alleged in the petition charging child abuse or neglect,  
15 has been adjudged by the court to constitute child abuse  
16 or neglect.

17 (c) "Child abuse and neglect" or "child abuse or  
18 neglect" means physical injury, substantial mental or  
19 emotional injury, sexual abuse, sexual exploitation or  
20 negligent treatment or maltreatment of a child by a parent,  
21 guardian or custodian who is responsible for the child's  
22 welfare, under circumstances which harm or threaten the  
23 health and welfare of the child.

24 (d) "Child abuse and neglect services" means social  
25 services which are directed toward:

26 (1) Protecting and promoting the welfare of children  
27 who are abused or neglected;

28 (2) Identifying, preventing and remedying conditions  
29 which cause child abuse and neglect;

30 (3) Preventing the unnecessary removal of children  
31 from their families by identifying family problems and  
32 assisting families in resolving problems which could lead to  
33 a removal of children and a breakup of the family;

34 (4) In cases where children have been removed from  
35 their families, providing services to the children and the  
36 families so as to restore such children to their families;



37 (5) Placing children in suitable adoptive homes when  
38 restoring the children to their families is not possible or  
39 appropriate; and

40 (6) Assuring the adequate care of children away from  
41 their families when the children have been placed in the  
42 custody of the department or third parties.

43 (e) "Imminent danger to the physical well-being of the  
44 child" means an emergency situation in which the welfare  
45 or the life of the child is threatened. Such emergency  
46 situation exists when there is reasonable cause to believe  
47 that any child in the home is or has been sexually abused or  
48 sexually exploited, or reasonable cause to believe that the  
49 following conditions threaten the health or life of any child  
50 in the home:

51 (1) Nonaccidental trauma inflicted by a parent,  
52 guardian, custodian, sibling or a babysitter or other  
53 caretaker; or

54 (2) A combination of physical and other signs indicating  
55 a pattern of abuse which may be medically diagnosed as  
56 battered child syndrome; or

57 (3) Nutritional deprivation; or

58 (4) Abandonment by the parent, guardian or custodian;  
59 or

60 (5) Inadequate treatment of serious illness or disease; or

61 (6) Substantial emotional injury inflicted by a parent,  
62 guardian or custodian.

63 (f) "Multidisciplinary team" means a group of  
64 professionals and paraprofessionals representing a variety  
65 of disciplines who interact and coordinate their efforts to  
66 identify, diagnose and treat specific cases of child abuse  
67 and neglect. Multidisciplinary teams may include, but are  
68 not limited to, medical, child care and law-enforcement  
69 personnel, social workers, psychologists and psychiatrists.  
70 Their goal is to pool their respective skills in order to  
71 formulate accurate diagnoses and to provide  
72 comprehensive coordinated treatment with continuity and  
73 follow-up for both parents and children. "Community

74 team” means a multidisciplinary group which addresses the  
75 general problem of child abuse and neglect in a given  
76 community, and may consist of several multidisciplinary  
77 teams with different functions.

78 (g) (1) “Neglected child” means a child:

79 (A) Whose physical or mental health is harmed or  
80 threatened by a present refusal, failure or inability of the  
81 child’s parent, guardian or custodian to supply the child  
82 with necessary food, clothing, shelter, supervision, medical  
83 care or education, when such refusal, failure or inability is  
84 not due primarily to a lack of financial means on the part of  
85 the parent, guardian or custodian; or

86 (B) Who is presently without necessary food, clothing,  
87 shelter, medical care, education or supervision because of  
88 the disappearance or absence of the child’s parent or  
89 custodian.

90 (2) “Neglected child” does not mean a child:

91 (A) Whose parent, guardian or custodian has failed to  
92 provide him with medical care because such medical care  
93 conflicts with the tenets and practices of a recognized  
94 religious denomination or order of which such parent,  
95 guardian or custodian is an adherent or member; or

96 (B) Whose education is conducted within the provisions  
97 of section one, article eight, chapter eighteen of this code.

98 (h) “Parenting skills” means a parent’s competencies  
99 in providing physical care, protection, supervision and  
100 psychological support appropriate to a child’s age and state  
101 of development.

102 (i) “Sexual abuse” means:

103 (A) As to a child who is less than sixteen years of age,  
104 any of the following acts which a parent, guardian or  
105 custodian shall engage in, attempt to engage in, or  
106 knowingly procure another person to engage in, with such  
107 child, notwithstanding the fact that the child may have  
108 willingly participated in such conduct or the fact that the  
109 child may have suffered no apparent physical injury or  
110 mental or emotional injury as a result of such conduct:

111 (i) Sexual intercourse; or

112 (ii) Sexual intrusion; or

113 (iii) Sexual contact; or

114 (B) As to a child who is sixteen years of age or older, any  
115 of the following acts which a parent, guardian or custodian  
116 shall engage in, attempt to engage in, or knowingly procure  
117 another person to engage in, with such child,  
118 notwithstanding the fact that the child may have consented  
119 to such conduct or the fact that the child may have suffered  
120 no apparent physical injury or mental or emotional injury  
121 as a result of such conduct:

122 (i) Sexual intercourse; or

123 (ii) Sexual intrusion; or

124 (iii) Sexual contact; or

125 (C) Any conduct whereby a parent, guardian or  
126 custodian displays his or her sex organs to a child, or  
127 procures another person to display his or her sex organs to a  
128 child, for the purpose of gratifying the sexual desire of the  
129 parent, guardian or custodian, of the person making such  
130 display, or of the child, or for the purpose of affronting or  
131 alarming the child.

132 (j) "Sexual contact" means sexual contact as that term  
133 is defined in section one, article eight-b, chapter sixty-one  
134 of this code.

135 (k) "Sexual exploitation" means an act whereby:

136 (1) A parent, custodian or guardian, whether for  
137 financial gain or not, persuades, induces, entices or coerces  
138 a child to engage in sexually explicit conduct as that term is  
139 defined in section one, article eight-c, chapter sixty-one of  
140 this code;

141 (2) A parent, guardian or custodian persuades, induces,  
142 entices or coerces a child to display his or her sex organs for  
143 the sexual gratification of the parent, guardian, custodian  
144 or a third person, or to display his or her sex organs under  
145 circumstances in which the parent, guardian or custodian  
146 knows such display is likely to be observed by others who  
147 would be affronted or alarmed.

148 (l) "Sexual intercourse" means sexual intercourse as  
 149 that term is defined in section one, article eight-b, chapter  
 150 sixty-one of this code.

151 (m) "Sexual intrusion" means sexual intrusion as that  
 152 term is defined in section one, article eight-b, chapter sixty-  
 153 one of this code.

**ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT AND ABUSE.**

- §49-6-2. Same—Right to counsel; improvement period; hearing; priority of proceeding; transcript.
- §49-6-3. Same—Temporary custody.
- §49-6-4. Medical and mental examinations.
- §49-6-5. Disposition of neglected or abused children.
- §49-6-8. Foster care review; annual reports to the court.
- §49-6-10. Duties of prosecuting attorney.

**§49-6-2. Same—Right to counsel; improvement period; hearing; priority of proceeding; transcript.**

1 (a) In any proceeding under the provisions of this  
 2 article, the child, his parents, his custodian or other persons  
 3 standing in loco parentis to him, such persons other than the  
 4 child being hereinafter referred to as other party or parties,  
 5 shall have the right to be represented by counsel at every  
 6 stage of the proceedings and shall be informed by the court  
 7 of their right to be so represented and that if they cannot  
 8 pay for the services of counsel, that counsel will be  
 9 appointed. If the child or other parties have not retained  
 10 counsel and the child and other parties cannot pay for the  
 11 services of counsel, the court shall, by order entered of  
 12 record, at least ten days prior to the date set for hearing,  
 13 appoint an attorney or attorneys to represent the child and  
 14 other party or parties and so inform the parties. Under no  
 15 circumstances may the same attorney represent both the  
 16 child and the other party or parties; however, if more than  
 17 one child from a family is involved in the proceeding, one  
 18 attorney may represent all the children. The court may  
 19 allow to each attorney so appointed a fee in the same  
 20 amount which appointed counsel can receive in felony  
 21 cases.

22 (b) In any proceeding under this article, the parents or  
 23 custodians may, prior to final hearing, move to be allowed

24 an improvement period of three to twelve months in order to  
25 remedy the circumstances or alleged circumstances upon  
26 which the proceeding is based. The court shall allow one  
27 such improvement period unless it finds compelling  
28 circumstances to justify a denial thereof, but may require  
29 temporary custody in the state department or other agency  
30 during the improvement period. An order granting such  
31 improvement period shall require the department to  
32 prepare and submit to the court a family case plan in  
33 accordance with the provisions of section three, article  
34 six-d of this chapter.

35 (c) In any proceeding under this article, the party or  
36 parties having custody of the child shall be afforded a  
37 meaningful opportunity to be heard, including the  
38 opportunity to testify and to present and cross-examine  
39 witnesses. The petition shall not be taken as confessed. A  
40 transcript or recording shall be made of all proceedings un-  
41 less waived by all parties to the proceeding. The rules of  
42 evidence shall apply. Where relevant, the court shall  
43 consider the efforts of the state department to remedy the  
44 alleged circumstances. At the conclusion of the hearing the  
45 court shall make a determination based upon the evidence  
46 and shall make findings of fact and conclusions of law as to  
47 whether such child is abused or neglected, which shall be  
48 incorporated into the order of the court. The findings must  
49 be based upon conditions existing at the time of the filing of  
50 the petition and proven by clear and convincing proof.

51 (d) Any petition filed and any proceeding held under the  
52 provisions of this article shall, to the extent practicable, be  
53 given priority over any other civil action before the court,  
54 except proceedings under article two-a, chapter forty-eight  
55 of this code and actions in which trial is in progress. Any  
56 petition filed under the provisions of this article shall be  
57 docketed immediately upon filing. Any hearing to be held at  
58 the end of an improvement period and any other hearing to  
59 be held during any proceedings under the provisions of this  
60 article shall be held as nearly as practicable on successive  
61 days and, with respect to said hearing to be held at the end  
62 of an improvement period, shall be held as close in time as  
63 possible after the end of said improvement period.

64 (e) Following the court's determination, it shall be  
65 inquired of the parents or custodians whether or not appeal  
66 is desired and the response transcribed. A negative response  
67 shall not be construed as a waiver. The evidence shall be  
68 transcribed and made available to the parties or their  
69 counsel as soon as practicable, if the same is required for  
70 purposes of further proceedings. If an indigent person  
71 intends to pursue further proceedings, the court reporter  
72 shall furnish a transcript of the hearing without cost to the  
73 indigent person if an affidavit is filed stating that he cannot  
74 pay therefor.

**§49-6-3. Same — Temporary custody.**

1 (a) Upon the filing of a petition, the court may order that  
2 a child alleged to be an abused or neglected child be  
3 delivered for not more than ten days into the custody of the  
4 state department or a responsible relative, pending a  
5 preliminary hearing, if it finds that: (1) There exists  
6 imminent danger to the physical well-being of the child,  
7 and (2) there are no reasonably available alternatives to  
8 removal of the child, including, but not limited to, the  
9 provision of medical, psychiatric, psychological or  
10 homemaking services in the child's present custody. In a  
11 case where there is more than one child in the home, the  
12 petition shall so state, and notwithstanding the fact that the  
13 allegations of abuse or neglect may pertain to less than all of  
14 such children, each child in the home for whom relief is  
15 sought shall be made a party to the proceeding. Even though  
16 the acts of abuse or neglect alleged in the petition were not  
17 directed against a specific child who is named in the  
18 petition, the court shall order the removal of such child,  
19 pending final disposition, if it finds that there exists  
20 imminent danger to the physical well-being of the child and  
21 a lack of reasonably available alternatives to removal. The  
22 initial order directing such custody shall contain an order  
23 appointing counsel and scheduling the preliminary  
24 hearing, and upon its service shall require the immediate  
25 transfer of custody of such child or children to the state  
26 department or a responsible relative.

27 (b) Whether or not the court orders immediate transfer  
28 of custody as provided in subsection (a) of this section, if the

29 facts alleged in the petition demonstrate to the court that  
30 there exists imminent danger to the child, the court may  
31 schedule a preliminary hearing giving the respondents at  
32 least five days' actual notice. If the court finds at the  
33 preliminary hearing that there are no alternatives less  
34 drastic than removal of the child and that a hearing on the  
35 petition cannot be scheduled in the interim period, the court  
36 may order that the child be delivered into the temporary  
37 custody of the state department or an appropriate person  
38 or agency for a period not exceeding sixty days: *Provided*,  
39 That if the court grants an improvement period as provided  
40 in subsection (b), section two of this article, the sixty-day  
41 limit upon temporary custody may be waived.

42 (c) If a child or children shall, in the presence of a child  
43 protective service worker of the department of human  
44 services, be in an emergency situation which constitutes an  
45 imminent danger to the physical well-being of the child or  
46 children, as that phrase is defined in section three, article  
47 one of this chapter, and if such worker has probable cause to  
48 believe that the child or children will suffer additional child  
49 abuse or neglect or will be removed from the county before a  
50 petition can be filed and temporary custody can be ordered,  
51 the worker may, prior to the filing of a petition, take the  
52 child or children into his or her custody without a court  
53 order: *Provided*, That after taking custody of such child or  
54 children prior to the filing of a petition, the worker shall  
55 forthwith appear before a circuit judge or a juvenile referee  
56 of the county wherein custody was taken, or if no such judge  
57 or referee be available, before a circuit judge or a juvenile  
58 referee of an adjoining county, and shall immediately apply  
59 for an order ratifying the emergency custody of the child  
60 pending the filing of a petition. The circuit court of every  
61 county in the state shall appoint at least one of the  
62 magistrates of the county to act as a juvenile referee, who  
63 shall serve at the will and pleasure of the appointing court,  
64 and who shall perform the functions prescribed for such  
65 position by the provisions of this subsection. The parents,  
66 guardians or custodians of the child or children may be  
67 present at the time and place of application for an order  
68 ratifying custody, and if at the time the child or children are  
69 taken into custody by the worker, the worker knows which

70 judge or referee is to receive the application, the worker  
71 shall so inform the parents, guardians or custodians. The  
72 application for emergency custody may be on forms  
73 prescribed by the supreme court of appeals or prepared by  
74 the prosecuting attorney or the applicant, and shall set  
75 forth facts from which it may be determined that the  
76 probable cause described above in this subsection exists.  
77 Upon such sworn testimony or other evidence as the judge  
78 or referee deems sufficient, the judge or referee may order  
79 the emergency taking by the worker to be ratified. If  
80 appropriate under the circumstances, the order may  
81 include authorization for an examination as provided for in  
82 subsection (b), section four of this article. If a referee issues  
83 such an order the referee shall by telephonic  
84 communication have such order orally confirmed by a  
85 circuit judge of the circuit or an adjoining circuit who shall  
86 on the next judicial day enter an order of confirmation. If  
87 the emergency taking is ratified by the judge or referee,  
88 emergency custody of the child or children shall be vested in  
89 the state department until the end of the next judicial day,  
90 at which time any such child taken into emergency custody  
91 shall be returned to the custody of his or her parent,  
92 guardian or custodian unless a petition has been filed and  
93 custody of the child has been transferred under the  
94 provisions of section three of this article.

#### §49-6-4. Medical and mental examinations.

1 (a) At any time during proceedings under this article the  
2 court may, upon its own motion or upon motion of the child  
3 or other parties, order the child or other parties to be  
4 examined by a physician, psychologist or psychiatrist, and  
5 may require testimony from such expert, subject to cross-  
6 examination and the rules of evidence: *Provided*, That the  
7 court shall not terminate parental or custodial rights of a  
8 party solely because the party refuses to submit to the  
9 examination, nor shall the court hold such party in  
10 contempt for refusing to submit to an examination. The  
11 physician, psychologist or psychiatrist shall be allowed to  
12 testify as to the conclusions reached from hospital, medical,  
13 psychological or laboratory records provided the same are  
14 produced at the hearing. The court by order shall provide



15 for the payment of all such expert witnesses. If the child,  
16 parent or custodian is indigent, such witnesses shall be  
17 compensated out of the treasury of the state, upon  
18 certificate of the court wherein the case is pending. No  
19 evidence acquired as a result of any such examination of the  
20 parent or any other person having custody of the child may  
21 be used against such person in any subsequent criminal  
22 proceedings against such person.

23 (b) If a person with authority to file a petition under the  
24 provisions of this article shall have probable cause to  
25 believe that evidence exists that a child has been abused or  
26 neglected and that such evidence may be found by a medical  
27 examination, the person may apply to a circuit judge or  
28 juvenile referee for an order to take such child into custody  
29 for delivery to a physician or hospital for examination. The  
30 application may be on forms prescribed by the supreme  
31 court of appeals or prepared by the prosecuting attorney or  
32 the applicant, and shall set forth facts from which it may be  
33 determined that probable cause exists for such belief. Upon  
34 such sworn testimony or other evidence as the judge or  
35 referee deems sufficient, the judge or referee may order any  
36 law-enforcement officer to take the child into custody and  
37 deliver the child to a physician or hospital for examination.  
38 If a referee issues such an order the referee shall by  
39 telephonic communication have such order orally  
40 confirmed by a circuit judge of the circuit or an adjoining  
41 circuit who shall on the next judicial day enter an order of  
42 confirmation. Any child welfare worker and the child's  
43 parents, guardians or custodians may accompany the  
44 officer for such examination. After the examination, the  
45 officer may return the child to the custody of his parent,  
46 guardian or custodian, retain custody of the child or deliver  
47 custody to the state department until the end of the next  
48 judicial day, at which time the child shall be returned to the  
49 custody of his or her parent, guardian or custodian unless a  
50 petition has been filed and custody of the child has been  
51 transferred to the department under the provisions of  
52 section three of this article.

**§49-6-5. Disposition of neglected or abused children.**

1 (a) Following a determination pursuant to section two

2 of this article wherein the court finds a child to be abused or  
3 neglected, the court may request from the state department  
4 information about the history, physical and emotional  
5 condition and present situation of the child. The court shall  
6 forthwith proceed to disposition giving both the petitioner  
7 and respondents an opportunity to be heard. The court shall  
8 give precedence to dispositions in the following sequence:

9 (1) Dismiss the petition;

10 (2) Refer the child, the abusing parent or other family  
11 members to a community agency for needed assistance and  
12 dismiss the petition;

13 (3) Return the child to his or her own home under  
14 supervision of the state department;

15 (4) Order terms of supervision calculated to assist the  
16 child and the abusing parent or parents which prescribe the  
17 manner of supervision and care of the child and which are  
18 within the ability of the parent or custodian to perform;

19 (5) Upon a finding that the abusing parent or parents  
20 are presently unwilling or unable to provide adequately for  
21 the child's needs, commit the child temporarily to the  
22 custody of the state department, a licensed private child  
23 welfare agency or a suitable person who may be appointed  
24 guardian by the court;

25 (6) Upon a finding that there is no reasonable likelihood  
26 that the conditions of neglect or abuse can be substantially  
27 corrected in the near future, and when necessary for the  
28 welfare of the child, terminate the parental or custodial  
29 rights and responsibilities and commit the child to the  
30 permanent guardianship of the state department or a  
31 licensed child welfare agency. If the court shall so find, then  
32 in fixing its dispositional order, the court shall consider the  
33 following factors: (1) The child's need for continuity of care  
34 and caretakers; (2) the amount of time required for the child  
35 to be integrated into a stable and permanent home  
36 environment; and (3) other factors as the court considers  
37 necessary and proper. Notwithstanding any other  
38 provisions of this article, the permanent parental rights  
39 shall not be terminated if a child fourteen years of age or

40 older or otherwise of an age of discretion as determined by  
41 the court, objects to such termination. No adoption of a  
42 child shall take place until all proceedings for termination  
43 of parental rights under this article and appeals thereof are  
44 final.

45 (b) As used in this section, "no reasonable likelihood  
46 that conditions of neglect or abuse can be substantially  
47 corrected" shall mean that, based upon the evidence before  
48 the court, the abusing adult or adults have demonstrated an  
49 inadequate capacity to solve the problems of abuse or  
50 neglect, on their own or with help. Such conditions shall be  
51 deemed to exist in the following circumstances, which shall  
52 not be exclusive:

53 (1) The abusing parent or parents have habitually  
54 abused or are addicted to alcohol, controlled substances or  
55 drugs, to the extent that proper parenting skills have been  
56 seriously impaired and such abusing parent or parents have  
57 not responded to or followed through the recommended and  
58 appropriate treatment which could have improved the  
59 capacity for adequate parental functioning;

60 (2) The abusing parent or parents have willfully refused  
61 or are presently unwilling to cooperate in the development  
62 of a reasonable family case plan designed to lead to the  
63 child's return to their care, custody and control;

64 (3) The abusing parent or parents have not responded to  
65 or followed through with a reasonable family case plan or  
66 other rehabilitative efforts of social, medical, mental health  
67 or other rehabilitative agencies designed to reduce or  
68 prevent the abuse or neglect of the child, as evidenced by the  
69 continuation or insubstantial diminution of conditions  
70 which threatened the health, welfare or life of the child;

71 (4) The abusing parent or parents have abandoned the  
72 child;

73 (5) The abusing parent or parents have repeatedly or  
74 seriously injured the child physically or emotionally, or  
75 have sexually abused or sexually exploited the child, and  
76 the degree of family stress and the potential for further  
77 abuse and neglect are so great as to preclude the use of  
78 resources to mitigate or resolve family problems or assist

79 the abusing parent or parents in fulfilling their respon-  
80 sibilities to the child; or

81 (6) The abusing parent or parents have incurred  
82 emotional illness, mental illness or mental deficiency of  
83 such duration or nature as to render such parent or parents  
84 incapable of exercising proper parenting skills or  
85 sufficiently improving the adequacy of such skills.

86 (c) The court may as an alternative disposition allow to  
87 the parents or custodians an improvement period not to  
88 exceed twelve months. During this period the parental  
89 rights shall not be permanently terminated and the court  
90 shall require the parent to rectify the conditions upon  
91 which the determination was based. No more than one such  
92 postdispositional improvement period may be granted. The  
93 court may order the child to be placed with the parents, a  
94 relative, the state department or other appropriate  
95 placement during the period. At the end of the period the  
96 court shall hold a hearing to determine whether the  
97 conditions have been adequately improved, and at the  
98 conclusion of such hearing, shall make a further  
99 dispositional order in accordance with this section.

**§49-6-8. Foster care review; annual reports to the court.**

1 (a) If, twelve months after receipt of physical or legal  
2 custody of a child, the state department has not placed a  
3 child in permanent foster care or an adoptive home or  
4 placed the child with a natural parent, the state department  
5 shall file with the court a petition stating the child's  
6 situation, the efforts that have been made to place the child  
7 in a permanent situation, the present foster care  
8 arrangements and the plan for pursuing permanent  
9 arrangements. "Permanent foster care" shall mean a  
10 written arrangement with an adult or adults following a  
11 six-month trial period whereby the state department places  
12 the care, custody and control of a child until the child's  
13 emancipation with such adult or adults. The court may  
14 schedule a hearing in chambers, giving notice and the right  
15 to be present to: The child, if twelve years of age or older;  
16 the child's parents; the child's guardians; the child's foster  
17 parents; and such other persons as the court may in its  
18 discretion direct. At the conclusion of the proceeding the

19 court shall in accordance with the best interests of the child  
20 enter an appropriate order of disposition. The court shall  
21 possess continuing jurisdiction over cases reviewed under  
22 this section for so long as a child remains in temporary  
23 foster care, or, when a child is returned to his natural  
24 parents subject to conditions imposed by the court, for so  
25 long as the conditions are effective. If the child remains in  
26 the physical or legal custody of the state department, the  
27 state department shall file a supplementary petition with  
28 the court within eighteen months and every eighteen  
29 months thereafter until the child is placed in an adoptive  
30 home or permanent foster care or returned to his or her  
31 parents.

32 (b) The state department shall annually report to the  
33 court the current status of the placements of children in  
34 permanent care and custody of the state department who  
35 have not been adopted.

**§49-6-10. Duties of prosecuting attorney.**

1 It shall be the duty of every prosecuting attorney to fully  
2 and promptly cooperate with persons seeking to apply for  
3 relief under the provisions of this article in all cases of  
4 suspected child abuse and neglect, to promptly prepare  
5 applications and petitions for relief requested by such  
6 persons, to investigate reported cases of suspected child  
7 abuse and neglect for possible criminal activity and to  
8 report at least annually to the grand jury regarding the  
9 discharge of his or her duties with respect thereto.

**ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR  
NEGLECTED.**

§49-6A-5. Reporting procedures.

§49-6A-8. Failure to report; penalty.

**§49-6A-5. Reporting procedures.**

1 Reports of child abuse and neglect pursuant to this article  
2 shall be made immediately by telephone to the local state  
3 department child protective service agency and shall be  
4 followed by a written report within forty-eight hours if so  
5 requested by the receiving agency. The state department  
6 shall establish and maintain a twenty-four hour, seven-

7 day-a-week telephone number to receive such calls  
8 reporting suspected or known child abuse or neglect.

9 A copy of any report of serious injury shall be forwarded  
10 by the department to the appropriate law-enforcement  
11 agency, the prosecuting attorney or the coroner or medical  
12 examiner's office. All reports under this article shall be  
13 confidential, and unless there are pending proceedings with  
14 regard thereto, shall be destroyed six years following their  
15 preparation. Reports of known or suspected institutional  
16 child abuse or neglect shall be made and received as all  
17 other reports made pursuant to this article.

**§49-6A-8. Failure to report; penalty.**

1 Any person, official or institution required by this article  
2 to report a case involving a child known or suspected to be  
3 abused or neglected, or required by section five of this  
4 article to forward a copy of a report of serious injury, who  
5 knowingly fails to do so or knowingly prevents another  
6 person acting reasonably from doing so, shall be guilty of a  
7 misdemeanor, and, upon conviction thereof, shall be  
8 confined in the county jail not more than ten days or fined  
9 not more than one hundred dollars, or both.

**ARTICLE 6C. CHILDREN'S TRUST FUND FOR CHILD ABUSE AND  
NEGLECT PREVENTION.**

§49-6C-1. Legislative findings and intent.

§49-6C-2. Definitions.

§49-6C-3. Establishment of children's trust fund; federal funds, gifts, bequests and donations; administration of fund.

§49-6C-4. Disbursements from children's trust fund.

§49-6C-5. Contribution of portion of income tax refund to children's trust fund.

§49-6C-6. Commission on children and youth established; composition; duties and responsibilities.

§49-6C-8. Recommendations to governor and Legislature.

**§49-6C-1. Legislative findings and intent.**

1 The Legislature finds that child abuse and neglect are  
2 threats to the family unit and impose major expenses on  
3 society. The Legislature further finds that there is a need to  
4 assist private and public agencies in identifying and  
5 establishing community-based educational and service  
6 programs for the prevention of child abuse and neglect. It is

7 the intent of the Legislature that an increase in prevention  
8 programs will help reduce the breakdown in families and  
9 thus reduce the need for state intervention and state  
10 expense. It is further the intent of the Legislature that child  
11 abuse and neglect prevention programs be partnerships  
12 between communities, citizens and the state.

**§49-6C-2. Definitions.**

1 For the purposes of this article:

2 (a) "Commission" or "commission on children and  
3 youth" means the commission on children and youth as  
4 heretofore established under the provisions of executive  
5 order no. 1 — 79 within the department of human services;

6 (b) "Trust fund" means the children's trust fund for the  
7 prevention of child abuse and neglect as hereinafter  
8 established in this article.

**§49-6C-3. Establishment of children's trust fund; federal funds, gifts, bequests and donations; administration of fund.**

1 There is established the children's trust fund for the  
2 purpose of preventing child abuse and neglect. The trust  
3 fund shall consist of federal funds granted by Congress or  
4 executive order for the purposes of this article as well as  
5 gifts, bequests and donations from individuals, private  
6 organizations or foundations. Each state taxpayer may  
7 voluntarily contribute a portion of his state income tax  
8 refund to the children's trust fund by following the  
9 procedures designated in section five of this article. All  
10 funds received in the manner provided herein shall be  
11 transmitted to the state treasurer for deposit in the trust  
12 fund. All interest accruing from investment of moneys in  
13 the trust fund shall be credited to the fund. The legislative  
14 auditor shall conduct an annual audit of the trust fund.

**§49-6C-4. Disbursements from children's trust fund.**

1 (a) The commission on children and youth, upon a  
2 majority vote of the members appointed and then serving,  
3 may determine the manner in which moneys credited to the  
4 children's trust fund shall be expended, and shall direct the  
5 commissioner of the department of human services to

6 transmit to the auditor his requisition drawn to the order of  
7 a governmental agency, nonprofit private organization or  
8 combinations thereof, as the case may be, for the following  
9 purposes:

10 (1) Establishing and maintaining programs for the  
11 prevention of child abuse and neglect. Such programs may  
12 include, but are not limited to, community-based programs  
13 related to crisis care, aid to parents, child abuse counseling,  
14 support groups for abusive or potentially abusive parents  
15 and their children and early identification of families where  
16 the potential for child abuse and neglect exists;

17 (2) Providing educational programs directed toward the  
18 prevention of child abuse and neglect. Such programs may  
19 include, but are not limited to, community-based  
20 educational programs on prenatal care, perinatal bonding,  
21 child development, basic child care, care of children with  
22 special needs, coping with family stress and safety skills for  
23 children in self care;

24 (3) Establishing and maintaining a continuing program  
25 of community relations aimed at (A) interpreting child  
26 protective services to the community, (B) promoting the  
27 identification of children in need of protection, and (C)  
28 maintaining clear lines of responsibility with hospital,  
29 education, law-enforcement, juvenile court and other  
30 publicly and privately employed personnel providing child  
31 neglect and abuse services;

32 (4) Establishing and maintaining local, county or  
33 multicounty child abuse prevention organizations,  
34 including child abuse prevention chapters that comply with  
35 the regulations of the national committee for prevention of  
36 child abuse;

37 (5) Assisting public agencies or nonprofit private  
38 organizations or combinations thereof in making  
39 applications for grants from, or in entering into contracts  
40 with, the secretary of the federal department of health and  
41 human services for demonstration programs and projects  
42 designed to prevent child abuse and neglect;

43 (6) Matching federal moneys to provide increased



44 funding for educational programs and services related to  
45 the prevention of child abuse and neglect; and

46 (7) Research for, and evaluation of, educational  
47 programs and services related to the prevention of child  
48 abuse and neglect.

49 (b) For each year that the trust fund exists, the  
50 commission may authorize the expenditure of no more than  
51 one half of the income of the trust fund for that year for the  
52 aforesaid purposes. No less than one half of the annual  
53 income of the trust fund shall be invested, with the interest  
54 thereon being returned to the fund.

**§49-6C-5. Contribution of portion of income tax refund to children's trust fund.**

1 (a) Contributions to the children's trust fund will be  
2 derived, in part, from voluntary contributions of a portion  
3 of refunds due to taxpayers, as designated by taxpayers on  
4 state personal income tax return forms.

5 (b) Each West Virginia individual income tax return  
6 shall contain a designation as follows:

7 **"WEST VIRGINIA CHILDREN'S TRUST FUND CONTRIBUTION PROGRAM**

8 Check if you wish to designate a portion of your tax  
9 refund to this trust fund, which is established to fund  
10 programs and services to prevent child abuse and neglect:

11 \$2 ( ) \$5 ( ) \$10 ( ) Other \$ \_\_\_\_\_ ( )

12 If joint return, check if spouse wishes to designate a  
13 portion of tax refund:

14 \$2 ( ) \$5 ( ) \$10 ( ) Other \$ \_\_\_\_\_ ( )."

15 Each individual taxpayer desiring to voluntarily  
16 contribute to the trust fund may so indicate by placing an  
17 "X" in the appropriate box on the state income tax return  
18 form. His or her contribution shall be credited to the trust  
19 fund.

20 (c) The tax department shall determine by the first day  
21 of July of each year the total amount designated pursuant to  
22 this section and shall report that amount to the state

23 treasurer who shall credit that amount to the children's  
24 trust fund.

25 (d) The trust fund will collect moneys until the amount  
26 of five million dollars is reached.

27 (e) The provisions of this section shall apply to tax  
28 return forms filed after the first day of January, one  
29 thousand nine hundred eighty-five.

**§49-6C-6. Commission on children and youth established;  
composition; duties and responsibilities.**

1 (a) The commission on children and youth as heretofore  
2 established is continued, and is hereby established as a  
3 statutory body within the department of human services:  
4 Until the first day of July, one thousand nine hundred  
5 eighty-four, the commission shall be composed of at least  
6 twenty and no more than thirty citizen members appointed  
7 by the governor to serve at his will and pleasure, and shall  
8 be generally representative of the state's citizens. In  
9 addition, the director of health, the superintendent of  
10 schools, the commissioner of corrections, the commissioner  
11 of the department of human services and the director of the  
12 governor's office of economic and community development  
13 or their designated representatives shall serve as voting ex  
14 officio members of the commission. After the first day of  
15 July, one thousand nine hundred eighty-four, the  
16 commission shall be composed of twenty citizen members to  
17 be appointed by the governor. In addition, the director of  
18 health, the superintendent of schools, the commissioner of  
19 corrections, the commissioner of the department of human  
20 services and the director of the governor's office of  
21 economic and community development or their designated  
22 representatives shall serve as voting ex officio members of  
23 the commission. Of the twenty initial members appointed  
24 by the governor, ten shall be appointed for a term of two  
25 years, and ten shall be appointed for a term of four years.  
26 Upon the expiration of the initial terms, the governor shall  
27 make appointments of members to the board to serve for  
28 terms of four years each. Any vacancy in the board shall be  
29 filled by appointment by the governor, with such newly  
30 appointed member to serve for the remainder of the  
31 unexpired term. No citizen member shall be appointed to

32 serve more than two consecutive four year terms. Members  
33 of the commission may receive no compensation, but shall  
34 be entitled to reimbursement for actual and necessary  
35 expenses incurred in the performance of their duties. All  
36 funding for administrative purposes, and all staff for the  
37 commission shall be provided by the department of human  
38 services.

39 (b) The commission, in carrying out its duties under the  
40 provisions of this article, shall do all of the following:

41 (1) Develop a state plan for distribution of available  
42 moneys from the children's trust fund;

43 (2) Develop criteria for and determine the maximum  
44 size of grants for disbursement from the trust fund;

45 (3) Award grants in accordance with established  
46 criteria;

47 (4) Monitor disbursements from the trust fund;

48 (5) Provide for the exchange of information regarding  
49 programs funded by moneys from the trust fund;

50 (6) Prepare an annual report describing the financial  
51 status of the trust fund, criteria established for the  
52 awarding of grants and the grants awarded; and

53 (7) Report before the regular session of the Legislature  
54 in the year one thousand nine hundred eighty-five, and  
55 before each regular legislative session thereafter, to the  
56 governor and the Legislature concerning the commission's  
57 activities and the effectiveness of those activities in  
58 fostering the prevention of child abuse and neglect.

59 (c) In addition to the duties imposed by the provisions of  
60 this section, the commission shall also continue the  
61 following responsibilities formerly imposed by executive  
62 order:

63 (1) To advocate generally the interests of children and  
64 youth in this state;

65 (2) To assist in developing cooperation among public  
66 and private agencies engaged in the delivery of services to  
67 children and youth in this state;

68 (3) To research the specific needs of children and youth,  
69 to assess current and proposed programs to meet these  
70 needs and to make findings and recommendations to the  
71 Governor and the Legislature annually;

72 (4) To serve as the liaison for West Virginia with the  
73 white house conference on children and youth and with  
74 any other national or international conferences or com-  
75 mittees when representation of West Virginia's interest  
76 would bring benefit to its children and youth; and

77 (5) To perform such other functions as may be directed  
78 by the Governor.

**§49-6C-7. Recommendations to governor and Legislature.**

1 The commission shall recommend to the governor and the  
2 Legislature such changes in state programs, statutes,  
3 policies, budgets and standards as they believe will reduce  
4 the problem of child abuse and neglect, improve  
5 coordination among state agencies that provide prevention  
6 services and improve the condition of children and parents  
7 or guardians who are in need of child abuse and neglect  
8 services.

**ARTICLE 6D. WEST VIRGINIA CHILD PROTECTIVE SERVICES ACT.**

§49-6D-1. Short title

§49-6D-2. Purpose and intent.

§49-6D-3. Family case plans for parents of abused or neglected children.

**§49-6D-1. Short title.**

1 This article shall be known and cited as the "West  
2 Virginia Child Protective Services Act."

**§49-6D-2. Purpose and Intent.**

1 (a) In pursuit of the purposes of this chapter to provide a  
2 comprehensive system of child welfare throughout the state  
3 which will (1) assure to each child such care and guidance,  
4 preferably in the child's home, as will serve the spiritual,  
5 emotional, mental and physical welfare of the child, and (2)  
6 preserve and strengthen the family ties wherever possible,  
7 while recognizing both the fundamental rights of  
8 parenthood and the state's responsibility to assist the  
9 family in providing the necessary training and education of

10 all children, the Legislature enacts this article to provide  
11 for the protection of the children of this state from abuse  
12 and neglect and to provide direction to responsible state  
13 officers. This article is enacted in pursuit of the purpose of  
14 this chapter and the heretofore expressed intention of the  
15 Legislature to provide for the removal of a child from the  
16 custody of the child's parents only when the child's welfare  
17 cannot be otherwise adequately safeguarded, and is  
18 enacted to secure to a child removed from the family a  
19 degree of custody, care and control consistent with the  
20 child's best interests and the other goals of this chapter, as  
21 expressed in section one, article one of this chapter.

22 (b) In light of this purpose, the Legislature intends to  
23 provide for:

24 (1) The acceptance by the department of referrals or  
25 reports of abuse or neglect, both judicial and extrajudicial,  
26 voluntary or involuntary, and the offering of opportuni-  
27 ties by the department whereby parents, guardians or  
28 custodians and thier children may avail themselves of  
29 public and private resources offering programs and services  
30 which are primarily preventive and nonpunitive and  
31 geared toward a rehabilitation of the home and a treatment  
32 of the underlying factors which cause or tend to cause abuse  
33 and neglect;

34 (2) The vigorous and fair assessment and investigation  
35 of alleged cases of child abuse or neglect to the end that no  
36 child subjected to abuse or neglect shall be left without  
37 assistance consistent in all respects with the purposes and  
38 goals of this chapter and article;

39 (3) The thorough and professional diagnosis of cases to  
40 determine whether child abuse or neglect exists, whether  
41 court action is appropriate, or whether a high risk or danger  
42 to children requires emergency services or the initiation of  
43 an immediate response;

44 (4) An assessment of the family, family members and  
45 family problems in each case, to identify strengths as well as  
46 areas for improvement, and to determine how best to  
47 augment the protective services functions of the  
48 department with community resources available to and

49 needed by the family, to the end that a plan can be  
50 implemented whereby every abused or neglected child in  
51 the state will be provided an environment for his or her  
52 custody, care and control which offers as normal a family  
53 life as practicable, free of abuse or neglect, preferably in the  
54 child's own home;

55 (5) In cases where removal of a child is required, but a  
56 termination of parental rights is not ordered, the  
57 opportunity for the family to visit and maintain family ties  
58 in the family home or in home-like and other conducive  
59 surroundings, avoiding, wherever possible, the austere  
60 surroundings of a public or private agency with limited  
61 time and lack of privacy;

62 (6) The fulfillment of the state's responsibility to assist  
63 the family in a manner consonant with the purposes of this  
64 article, even in cases requiring temporary removal of the  
65 child, without fear by the citizens that the state's exercise of  
66 that responsibility will be unfairly used as a means of  
67 terminating family ties;

68 (7) The prompt and effective termination of parental  
69 rights in cases where there is an abject failure of the parents  
70 or custodians to reasonably utilize fair, professionally  
71 developed and communicated opportunities to end the  
72 abuse or neglect.

**§49-6D-3. Family case plans for parents of abused or neglected children.**

1 (a) Within the limits of funds available, the department  
2 of human services shall develop a family case plan for every  
3 family wherein a person has been referred to the  
4 department after being allowed an improvement period  
5 under the provisions of subsection (b), section two, or  
6 subsection (c), section five, article six of this chapter, and  
7 for each family referred to the department for supervision  
8 and treatment following a determination by a court that a  
9 parent, guardian or custodian in such family has abused or  
10 neglected a child. The department may also prepare a  
11 family case plan for any person who voluntarily seeks child  
12 abuse and neglect services from the department, or who is  
13 referred to the department by another public agency or  
14 private organization. The family case plan is to clearly set

15 forth an organized, realistic method of identifying family  
16 problems and the logical steps to be used in resolving or  
17 lessening those problems. Every family case plan prepared  
18 by the department shall contain the following:

19 (1) A listing of specific, measurable, realistic goals to be  
20 achieved;

21 (2) An arrangement of goals into an order of priority;

22 (3) A listing of the problems that will be addressed by  
23 each goal;

24 (4) A specific description of how the assigned  
25 caseworker or caseworkers and the abusing parent,  
26 guardian or custodian will achieve each goal;

27 (5) A description of the departmental and community  
28 resources to be used in implementing the proposed actions  
29 and services;

30 (6) A list of the services which will be provided;

31 (7) Time targets for the achievement of goals or portions  
32 of goals;

33 (8) An assignment of tasks to the abusing or neglecting  
34 parent, guardian or custodian, to the caseworker or  
35 caseworkers, and to other participants in the planning  
36 process; and

37 (9) A designation of when and how often tasks will be  
38 performed.

39 (b) In cases where the family has been referred to the  
40 department by a court under the provisions of this chapter,  
41 and further action before the court is pending, the family  
42 case plan described in subsection (a) of this section shall be  
43 furnished to the court within thirty days after the entry of  
44 the order referring the case to the department, and shall be  
45 available to counsel for the parent, guardian or custodian  
46 and counsel for the child or children. The department shall  
47 encourage participation in the development of the family  
48 case plan by the parent, guardian or custodian, and, if the  
49 child is above the age of twelve years and the child's  
50 participation is otherwise appropriate, by the child. It shall  
51 be the duty of counsel for the participants to participate in

52 the development of the family case plan. The family case  
53 plan may be modified from time to time by the department  
54 to allow for flexibility in goal development, and in each  
55 such case the modifications shall be submitted to the court  
56 in writing. The court shall examine the proposed family  
57 case plan or any modification thereof, and upon a finding by  
58 the court that the plan or modified plan can be easily  
59 communicated, explained and discussed so as to make the  
60 participants accountable and able to understand the  
61 reasons for any success or failure under the plan, the court  
62 shall inform the participants of the probable action of the  
63 court if goals are met or not met.

64 (c) (1) In addition to the family case plan provided for  
65 under the provisions of subsection (b) of this section, the  
66 department shall prepare, as an appendix to the family case  
67 plan, an expanded "worker's case plan." As utilized by the  
68 department under the provisions of this section, the  
69 worker's case plan shall consist of the following:

70 (A) All of the information contained in the family case  
71 plan described in subsection (c) of this section;

72 (B) A prognosis for each of the goals projected in the  
73 family case plan, assessing the capacity of the parent,  
74 guardian or custodian to achieve the goal and whether  
75 available treatment services are likely to have the desired  
76 outcome;

77 (C) A listing of the criteria to be used to assess the degree  
78 to which each goal is attained;

79 (D) A description of when and how the department will  
80 decide when and how well each goal has been attained;

81 (E) If possible, a listing of alternative methods and  
82 specific services which the caseworker or caseworkers may  
83 consider using if the original plan does not work; and

84 (F) A listing of criteria to be used in determining when  
85 the family case plan should be terminated.

86 (2) Because the nature of the information contained in  
87 the worker's case plan described in subdivision (1) of this  
88 subsection may, in some cases, be construed to be negative  
89 with respect to the probability of change, or may be viewed



90 as a caseworker's attempt to impose personal values into  
91 the situation, or may raise barriers of hostility and  
92 resistance between the caseworker and the family  
93 members, the worker's case plan shall not be made  
94 available to the court or to persons outside of the  
95 department, but shall be used by the department for the  
96 purpose of confirming the effectiveness of the family case  
97 plan or for determining that changes in the family case plan  
98 need to be made.

99 (d) In furtherance of the provisions of this article, the  
100 commissioner of the department of human services shall,  
101 within the limits of available funds, establish programs  
102 and services for the following purposes:

103 (1) For the development and establishment of training  
104 programs for professional and paraprofessional personnel  
105 in the fields of medicine, law, education, social work and  
106 other relevant fields who are engaged in, or intend to work  
107 in, the field of the prevention, identification and treatment  
108 of child abuse and neglect; and training programs for  
109 children, and for persons responsible for the welfare of  
110 children, in methods of protecting children from child  
111 abuse and neglect;

112 (2) For the establishment and maintenance of centers,  
113 serving defined geographic areas, staffed by  
114 multidisciplinary teams and community teams of personnel  
115 trained in the prevention, identification and treatment of  
116 child abuse and neglect cases, to provide a broad range of  
117 services related to child abuse and neglect, including direct  
118 support and supervision of satellite centers and attention  
119 homes, as well as providing advice and consultation to  
120 individuals, agencies and organizations which request  
121 such services;

122 (3) For furnishing services of multidisciplinary teams  
123 and community teams, trained in the prevention,  
124 identification and treatment of child abuse and neglect  
125 cases, on a consulting basis to small communities where  
126 such services are not available;

127 (4) For other innovative programs and projects that  
128 show promise of successfully identifying, preventing or

129 remedying the causes of child abuse and neglect, including,  
130 but not limited to, programs and services designed to  
131 improve and maintain parenting skills, programs and  
132 projects for parent self-help, and for prevention and  
133 treatment of drug-related child abuse and neglect; and

134 (5) Assisting public agencies or nonprofit private  
135 organizations or combinations thereof in making  
136 applications for grants from, or in entering into contracts  
137 with, the secretary of the federal department of health and  
138 human services for demonstration programs and projects  
139 designed to identify, prevent and treat child abuse and  
140 neglect.

141 (e) Agencies, organizations and programs funded to  
142 carry out the purposes of this section shall be structured so  
143 as to comply with any applicable federal law, any  
144 regulation of the federal department of health and human  
145 services or the secretary thereof, and any final  
146 comprehensive plan of the federal advisory board on child  
147 abuse and neglect. In funding organizations, the  
148 department shall, to the extent feasible, ensure that  
149 parental organizations combating child abuse and neglect  
150 receive preferential treatment.

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## CHAPTER 28

(Com. Sub. for H. B. 1558—By Delegate Sluss and Delegate Casey)

[Passed March 10, 1984; 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 eighteen, relating to after-care plans for children committed to certain institutions and facilities; providing for preparation and submission of a plan to the committing court forty-five days prior to the child's discharge; specifying contents of plan; requiring comments by probation officers or community mental health facility personnel within twenty-one days receipt of the

plan and providing for comments by interested persons within twenty-one days; providing a hearing and waiver thereof and an order adopting the plan as submitted or as modified; and imposing additional duties and responsibilities upon probation officers and other persons.

*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 eighteen, to read as follows:

**ARTICLE 5. JUVENILE PROCEEDINGS.**

**§49-5-18. After-care plans; submission to the court; comments to be submitted; hearing on the plan and adoption thereof.**

1 (a) Forty-five days prior to the discharge of a child from  
2 any institution or facility pursuant to subdivision five, six or  
3 seven, subsection (b), section thirteen of this article, the  
4 director of such institution or facility shall have prepared and  
5 shall forward to the committing court a copy of the child's  
6 proposed after-care plan. Copies of the plan shall also be  
7 sent to: (1) The child's parents, if any, or legal guardian if the  
8 child is not living with his parents, (2) the child's lawyer,  
9 (3) the child's probation officer or community mental health  
10 center professional, and (4) the prosecuting attorney of the  
11 county in which the original commitment proceedings were  
12 held.

13 (b) The after-care plan shall contain a detailed description  
14 of the training, schooling, counseling and treatment received  
15 while at the institution or facility and the same proposed for  
16 the child upon his discharge. The plan shall describe any  
17 problems the child may have, the source of those problems  
18 and describe how those problems will be addressed by the  
19 after-care plan. Attached to the plan shall be a list of the  
20 persons who are to receive copies of this plan.

21 (c) Within twenty-one days of the receipt of the plan, the  
22 child's probation officer or community mental health center

23 professional shall, and any other person who received a copy of  
24 the plan pursuant to subsection (a) of this section may, submit  
25 written comments concerning the plan to the court: *Provided*,  
26 That if any person does submit comments upon the plan, he  
27 shall also send copies of those comments to every other per-  
28 son who received a copy of the plan pursuant to subsection (a)  
29 of this section from the director.

30 (d) Within the twenty-one days provided in subsection (c)  
31 of this section it shall be the responsibility and duty of the  
32 child's probation officer or the community mental health  
33 center professional who receives a copy of the after-care plan  
34 to contact all other persons, organizations and agencies to be  
35 involved in executing the plan and to determine whether such  
36 persons, organizations and agencies are capable of and will be  
73 adequately prepared to execute the provisions of the plan:  
38 *Provided*, That if a hearing is held to discuss the plan as  
39 provided in subsection (e) of this section, representatives of  
40 such persons, organizations or agencies may be required to  
41 appear unless excused by the court.

42 (e) The judge to whom the plan was sent shall within  
43 forty-five days of receipt of the plan schedule and hold a  
44 hearing to consider the plan, including any comments or ob-  
45 jections submitted in response thereto: *Provided*, That if no  
46 adverse comments or objections are submitted, a hearing  
47 need not be held. The court shall consider the after-care plan as  
48 submitted and shall within five days of the hearing or within  
49 forty-five days of the receipt of the plan if no hearing is held  
50 issue an order which adopts the plan as submitted or as  
51 modified in response to comments and objections: *Provided*,  
52 *however*, That the plan as adopted by order of the court shall  
53 be in the best interests of the child and be in conformity with  
54 the state's interest in youth as embodied in subsection (b),  
55 section thirteen of this article: *Provided further*, That the  
56 court shall appoint either the child's probation officer or a  
57 community health center professional to act as supervisor  
58 of the plan, which supervisor shall make a report commenting  
59 on the progress of the child to the court every sixty days or  
60 until the court shall determine that no such report is necessary  
61 or that after-care is no longer needed.

## CHAPTER 29

(H. B. 1187—By Delegate Chambers)

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[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section six-a, article five-a, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to eliminating the development of the position of youth services coordinators in the comprehensive plan for a unified state system of pre-dispositional detention of juveniles.

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

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

### ARTICLE 5A. JUVENILE REFEREE SYSTEM.

#### §49-5A-6a. State plan for predisposition detention of juveniles; responsibilities of commissioner of human services until development of state plan.

1 (a) The commissioner of the department of human services  
2 and the legislative commission on juvenile law shall develop  
3 a comprehensive plan to establish a unified state system of  
4 predispositional detention for juveniles to be submitted to  
5 the West Virginia Legislature no later than the first day of  
6 January, one thousand nine hundred eighty-five. The plan  
7 shall be developed with input from the department of cor-  
8 rections, the governor's task force on crime, delinquency  
9 and correction and judicial and law-enforcement officials  
10 from throughout the state.

11 The plan shall include, but not be limited to, the following:

12 (1) The development of a coordinated plan for the ef-  
13 fective and efficient use of juvenile detention facilities oper-  
14 ated by local units of government and the state, including  
15 those operated regionally by the department of human ser-  
16 vices. Standards and criteria shall be established for the use

17 of detention. Priorities for the utilization of available space  
18 and transportation of juveniles to and from detention facilities  
19 shall also be established.

20 (2) Recommendations on the use of regional detention  
21 centers for detention hearings.

22 (3) Recommendations regarding the use of emergency  
23 home shelters and foster homes for temporary detention.

24 (4) Recommendations regarding the use of regional de-  
25 tention facilities and charges to counties for such services.

26 (5) An evaluation of the personnel needs and cost of main-  
27 taining all facilities and services recommended in the plan.

28 (b) Until the development and implementation of the plan  
29 set forth in subsection (a) of this section, the commissioner of  
30 the department of human services shall do the following:

31 (1) Identify and coordinate all programs currently avail-  
32 able in local communities for children in need of detention.  
33 These programs shall be listed in a central resource directory  
34 available for local authorities. This directory shall identify  
35 which juveniles are acceptable to each program and the cost  
36 of each program. Any program listed which is operated by  
37 a county or community must conform to guidelines established  
38 by the department of human services.

39 (2) Develop additional emergency shelters in those com-  
40 munities where no such facilities are now in existence, and  
41 where there is a demonstrable need for them.

42 (3) Coordinate a transportation assistance program for  
43 counties which have significant difficulty transporting youth  
44 to detention facilities. Grants will be made on the basis of  
45 proposals submitted to the department by local government  
46 units demonstrating special needs based on travel distance,  
47 youth detention need and lack of local resources despite good  
48 faith attempts to establish or utilize local programs. Reim-  
49 bursement grants will not exceed forty thousand dollars for  
50 fiscal year one thousand nine hundred eighty-two.

## CHAPTER 30

(Com. Sub. for H. B. 1157—By Delegate Steptoe and Delegate Williams)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article seven, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to contributing to the delinquency or neglect of a child; clarifying that the provisions of said section apply in the case of certain status offenses; and providing for penalties.

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

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

### ARTICLE 7. GENERAL PROVISIONS.

#### §49-7-7. Contributing to delinquency or neglect of a child.

1 A person who by any act or omission contributes to,  
2 encourages or tends to cause the delinquency or neglect of  
3 any child, including, but not limited to, aiding or encouraging  
4 any such child to habitually or continually refuse to re-  
5 spond, without just cause, to the lawful supervision of such  
6 child's parents, guardian or custodian or to be habitually  
7 absent from school without just cause, shall be guilty of a  
8 misdemeanor, and, upon conviction thereof, shall be fined  
9 not to exceed five hundred dollars, or imprisoned in the county  
10 jail for a period not exceeding one year, or both such fine  
11 and imprisonment.

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## CHAPTER 31

(Com. Sub. for H. B. 1802—By Delegate Moore)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new section, designated section twenty-four, relating to the civil service system; posting of job openings; where posted; and contents of notice.

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

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

**ARTICLE 6. CIVIL SERVICE SYSTEM.**

**§29-6-24. Posting of job openings.**

1 Whenever a job opening occurs within the classified service,  
2 the appointing authority shall, in addition to any other require-  
3 ment of law or regulation for the posting of job opening  
4 notices, at least five days before making an appointment to fill  
5 the job opening, post a notice within the building or facility  
6 where the duties of the job will be performed and throughout  
7 the agency, which notice states that a job opening has oc-  
8 curred and describes the duties to be performed by a person  
9 employed in that position.

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## CHAPTER 32

(H. B. 1437—By Delegate Starcher and Delegate Faircloth)

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[Passed March 5, 1984; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section five, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment of deputy clerks by the court.

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

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



**ARTICLE 2. CLAIMS AGAINST THE STATE.****§14-2-5. Court clerk and other personnel.**

1 The court shall have the authority to appoint a clerk and  
2 deputy clerks. The salaries of the clerk and the deputy clerks  
3 shall be fixed by the joint committee on government and  
4 finance, and shall be paid out of the regular appropriation for  
5 the court. The clerk shall have custody of all records and  
6 proceedings of the court, shall attend meetings and hearings  
7 of the court, shall administer oaths and affirmations, and shall  
8 issue all official summonses, subpoenas, orders, statements  
9 and awards. A deputy clerk shall act in the place and stead  
10 of the clerk in the clerk's absence.

11 The joint committee on government and finance may em-  
12 ploy other persons whose services shall be necessary to the  
13 orderly transaction of the business of the court and fix their  
14 compensation.

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**CHAPTER 33**

(S. B. 497—By Mr. McGraw, Mr. President and Senator White)

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[Passed March 10, 1984; to take effect July 1, 1984. Approved by the Governor.]

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

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

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

**ARTICLE 2. CLAIMS AGAINST THE STATE.****§14-2-8. Compensation of judges; expenses.**

1 Each judge of the court shall receive one hundred forty  
2 dollars for each day actually served, and actual expenses

3 incurred in the performance of his duties. The number  
4 of days served by each judge shall not exceed one hun-  
5 dred in any fiscal year, except by authority of the joint  
6 committee on government and finance: *Provided, That*  
7 in computing the number of days served, days utilized  
8 solely for the exercise of duties assigned to judges and  
9 commissioners by the provisions of article two-a of this  
10 chapter shall be disregarded. Requisitions for compensa-  
11 tion and expenses shall be accompanied by sworn and  
12 itemized statements, which shall be filed with the auditor  
13 and preserved as public records. For the purpose of this  
14 section, time served shall include time spent in the hear-  
15 ing of claims, in the consideration of the record, in the  
16 preparation of opinions and in necessary travel.

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## CHAPTER 34

(H. B. 2070—By Delegate Casey and Delegate Whitlow)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, nine, ten, eleven and twelve, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two-a by adding thereto a new section, designated section twenty-eight, relating to reparations awards to victims of crimes generally; redefining the term "claimant" to include nonresidents of this state; authorizing the payment of reparations for prospective expenses and losses; increasing the amount which may be paid for expenses related to funeral, cremation and burial; authorizing the employment of not more than two reparations investigators; eliminating the filing fee for filing an application for an award of reparations; requiring law-enforcement officers and prosecuting attorneys to furnish certain reports, information, witness statements and other data to the reparations investigator and granting to such persons immunity from civil liability; establishing a procedure for obtaining protective orders when the reparations investigator requests reports, information, witness statements and other data; describing the contents of a find-

ing of fact prepared by the reparations investigator; fixing a time for the filing of the reparations investigator's finding of fact and recommendation; and providing for the retroactive effect of amendments to said article two-a.

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

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

**ARTICLE 2A. REPARATION AWARDS TO VICTIMS OF CRIMES.**

§14-2A-3. Definitions.

§14-2A-9. Reparations investigators; compensation and expenses.

§14-2A-10. Filing of application for reparation award; contents.

§14-2A-11. Procedure for filing of application.

§14-2A-12. Investigation and recommendations by reparations investigator.

§14-2A-28. Retroactive effect of amendments.

**§14-2A-3. Definitions.**

1 As used in this article, the term:

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

5 (1) A victim;

6 (2) A dependent of a deceased victim;

7 (3) A third person other than a collateral source;

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

10 (b) "Collateral source" means a source of benefits or ad-  
11 vantages for economic loss otherwise reparable that the victim  
12 or claimant has received, or that is readily available to him,  
13 from any of the following sources:

14 (1) The offender;

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

- 18 (3) Social security, medicare and medicaid;
- 19 (4) State-required, temporary, nonoccupational disability  
20 insurance;
- 21 (5) Workers' compensation;
- 22 (6) Wage continuation programs of any employer;
- 23 (7) Proceeds of a contract of insurance payable to the  
24 victim or claimant for loss that was sustained because of the  
25 criminally injurious conduct;
- 26 (8) A contract providing prepaid hospital and other health  
27 care services or benefits for disability.
- 28 (c) "Criminally injurious conduct" means conduct that  
29 occurs or is attempted in this state which by its nature poses a  
30 substantial threat of personal injury or death, and is punishable  
31 by fine or imprisonment or death, or would be so punishable  
32 but for the fact that the person engaging in the conduct lacked  
33 capacity to commit the crime under the laws of this state.  
34 Criminally injurious conduct does not include conduct arising  
35 out of the ownership, maintenance or use of a motor vehicle,  
36 except when the person engaging in the conduct intended to  
37 cause personal injury or death, or except when the person  
38 engaging in the conduct is shown under this article to have  
39 committed negligent homicide, driving under the influence of  
40 alcohol, controlled substances or drugs or reckless driving.
- 41 (d) "Dependent" means an individual wholly or partially  
42 dependent upon the victim for care and support, and includes  
43 a child of the victim born after his death.
- 44 (e) "Economic loss" means economic detriment consisting  
45 only of allowable expense, work loss and replacement services  
46 loss. If criminally injurious conduct causes death, economic  
47 loss includes a dependent's economic loss and a dependent's  
48 replacement services loss. Noneconomic detriment is not  
49 economic loss; however, economic loss may be caused by pain  
50 and suffering or physical impairment.
- 51 (f) "Allowable expense" means reasonable charges incurred  
52 or to be incurred for reasonably needed products, services and  
53 accommodations, including those for medical care, rehabilita-  
54 tion and other remedial treatment and care.

55 Allowable expense includes a total charge not in excess of  
56 one thousand two hundred fifty dollars for expenses in any  
57 way related to funeral, cremation and burial. It does not in-  
58 clude that portion of a charge for a room in a hospital, clinic,  
59 convalescent home, nursing home or any other institution en-  
60 gaged in providing nursing care and related services in excess  
61 of a reasonable and customary charge for semiprivate accom-  
62 modations, unless accommodations other than semiprivate  
63 accommodations are medically required.

64 (g) "Work loss" means loss of income from work that the  
65 injured person would have performed if he had not been in-  
66 jured and expenses reasonably incurred or to be incurred by  
67 him to obtain services in lieu of those he would have performed  
68 for income, reduced by any income from substitute work  
69 actually performed or to be performed by him, or by income  
70 he would have earned in available appropriate substitute  
71 work that he was capable of performing but unreasonably  
72 failed to undertake.

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

78 (i) "Dependent's economic loss" means loss after a victim's  
79 death of contributions of things of economic value to his de-  
80 pendents, not including services they would have received  
81 from the victim if he had not suffered the fatal injury, less  
82 expenses of the dependents avoided by reason of the victim's  
83 death.

84 (j) "Dependent's replacement service loss" means loss rea-  
85 sonably incurred or to be incurred by dependents after a  
86 victim's death in obtaining ordinary and necessary services  
87 in lieu of those the victim would have performed for their  
88 benefit if he had not suffered the fatal injury, less expenses  
89 of the dependents avoided by reason of the victim's death and  
90 not subtracted in calculating dependent's economic loss.

91 (k) "Noneconomic detriment" means pain, suffering, in-

92 convenience, physical impairment or other nonpecuniary dam-  
93 age.

94 (1) "Victim" means a person who suffers personal injury or  
95 death as a result of criminally injurious conduct.

**§14-2A-9. Reparations investigators; compensation and expenses.**

1 The court of claims is hereby authorized to hire not more  
2 than two reparations investigators to be employed within the  
3 office of the clerk of the court of claims, who shall carry  
4 out the functions and duties set forth in section twelve of this  
5 article. Reparations investigators shall serve at the pleasure  
6 of the court of claims and under the administrative supervision  
7 of the clerk of the court of claims. The compensation of  
8 reparations investigators shall be fixed by the court, and such  
9 compensation, together with travel, clerical and other expenses  
10 of the clerk of the court of claims relating to a reparations  
11 investigator carrying out his duties under this article, shall be  
12 payable from the crime victims reparation fund as appropri-  
13 ated for such purpose by the Legislature.

**§14-2A-10. Filing of application for reparation award; contents.**

1 (a) A claim for an award of reparations shall be com-  
2 menced by filing an application for an award of reparations  
3 with the clerk of the court of claims. The application shall  
4 be in a form prescribed by the clerk of the court of claims  
5 and shall contain the following information:

6 (1) The name and address of the victim of the criminally  
7 injurious conduct, the name and address of the claimant and  
8 the relationship of the claimant to the victim;

9 (2) If the victim is deceased, the name and address of each  
10 dependent of the victim and the extent to which each is de-  
11 pendent upon the victim for care and support;

12 (3) The nature of the criminally injurious conduct that is  
13 the basis for the claim and the date on which the conduct  
14 occurred;

15 (4) The law-enforcement agency or officer to whom the  
16 criminally injurious conduct was reported and the date on  
17 which it was reported;

18 (5) The nature and extent of the injuries that the victim  
19 sustained from the criminally injurious conduct for which  
20 reparations are sought, the name and address of any person  
21 who gave medical treatment to the victim for the injuries,  
22 the name and address of any hospital or similar institution  
23 where the victim received medical treatment for the injuries  
24 and whether the victim died as a result of the injuries;

25 (6) The total amount of the economic loss that the victim,  
26 a dependent or the claimant sustained or will sustain as a re-  
27 sult of the criminally injurious conduct, without regard to the  
28 financial limitation set forth in subsection (g), section fourteen  
29 of this article;

30 (7) The amount of benefits or advantages that the victim, a  
31 dependent or other claimant has received or is entitled to  
32 receive from any collateral source for economic loss that re-  
33 sulted from the criminally injurious conduct, and the name  
34 of each collateral source;

35 (8) Whether the claimant is the spouse, parent, child,  
36 brother or sister of the offender, or is similarly related to an  
37 accomplice of the offender who committed the criminally in-  
38 jurious conduct;

39 (9) A release authorizing the court of claims, the court of  
40 claims commissioners and the reparations investigator to ob-  
41 tain any report, document or information that relates to the  
42 determination of the claim for an award of reparations;

43 (10) Any additional relevant information that the court of  
44 claims may require. The court of claims may require the  
45 claimant to submit, with the application, materials to sub-  
46 stantiate the facts that are stated in the application.

47 (b) All applications for an award of reparations shall be  
48 filed within two years after the occurrence of the criminally  
49 injurious conduct that is the basis of the application.

50 (c) A person who knowingly and willfully presents or at-  
51 tempts to present a false or fraudulent application, or a state  
52 officer or employee who knowingly and willfully participates  
53 or assists in the preparation or presentation of a false or fraud-  
54 ulent application, shall be guilty of a misdemeanor. A person

55 convicted, in a court of competent jurisdiction, of a violation  
56 of this section shall be fined not more than one thousand dol-  
57 lars or imprisoned for not more than one year, or both, in the  
58 discretion of such court. If the convicted person is a state  
59 officer or employee, he shall, in addition, forfeit his office or  
60 position of employment, as the case may be.

**§14-2A-11. Procedure for filing of application.**

1 The clerk of the court of claims shall establish a procedure  
2 for the filing, recording and processing of applications for an  
3 award of reparations.

**§14-2A-12. Investigation and recommendations by reparations in-  
vestigator.**

1 (a) The clerk of the court of claims shall transmit a copy  
2 of the application to the reparations investigator within seven  
3 days after the filing of the application.

4 (b) The reparations investigator, upon receipt of an ap-  
5 plication for an award of reparations from the clerk of the  
6 court of claims, shall investigate the claim. After completing  
7 the investigation, the reparations investigator shall make a  
8 written finding of fact and recommendation concerning an  
9 award of reparations. He shall file with the clerk the finding  
10 of fact and recommendation and all information or documents  
11 that he used in his investigation: *Provided*, That the repara-  
12 tions investigator shall not file information or documents  
13 which have been the subject of a protective order entered  
14 under the provisions of subsection (c) of this section.

15 (c) The reparations investigator, while investigating the  
16 claim, may require the claimant to supplement the application  
17 for an award of reparations with any further information or  
18 documentary materials, including any medical report readily  
19 available, which may lead to any relevant facts aiding in the  
20 determination of whether, and the extent to which, a claimant  
21 qualifies for an award of reparations. The reparations in-  
22 vestigator may depose any witness, including the claimant, in  
23 the same manner as witnesses are deposed under the rules of  
24 civil procedure for trial courts of record.

25 The reparations investigator while investigating the claim,



26 may also require law-enforcement officers and prosecuting  
27 attorneys employed by the state or any political subdivision  
28 thereof, to provide him with reports, information, witness  
29 statements or other data gathered in the investigation of the  
30 criminally injurious conduct that is the basis of any claim to  
31 enable him to determine whether, and the extent to which, a  
32 claimant qualifies for an award of reparations. The prosecut-  
33 ing attorney and any officer or employee of the prosecuting  
34 attorney or of the law-enforcement agency shall be immune  
35 from any civil liability that might otherwise be incurred as  
36 the result of providing such reports, information, witness state-  
37 ments or other data relating to the criminally injurious con-  
38 duct to the reparations investigator.

39       Upon motion of any party from whom such reports, informa-  
40 tion, witness statements or other data is sought, and for good  
41 cause shown, the court may make any order which justice re-  
42 quires to protect a witness or other person, including, but not  
43 limited to, the following: (1) That the reports, information, wit-  
44 ness statements or other data not be made available; (2) that  
45 the reports, information, witness statements or other data may  
46 be made available only on specified terms and conditions,  
47 including a designation of time and place; (3) that the reports,  
48 information, witness statements or other data be made avail-  
49 able only by a different method than that selected by the  
50 reparations investigator; (4) that certain matters not be  
51 inquired into, or that the scope of the reparations investiga-  
52 tor's request be limited to certain matters; (5) that the reports,  
53 information, witness statements or other data be examined  
54 only by certain persons designated by the court; (6) that the  
55 reports, information, witness statements or other data, after  
56 being sealed, be opened only by order of the court; (7) that  
57 confidential information, or the identity of confidential wit-  
58 nesses or informers not be disclosed, or disclosed only in a  
59 designated manner.

60       However, in any case wherein the reparations investigator  
61 has reason to believe that his investigation may interfere  
62 with or jeopardize an investigation of a crime by law-  
63 enforcement officers, he shall apply to the court of claims  
64 or a judge or commissioner thereof for an order grant-

65 ing leave to discontinue his investigation for a reason-  
66 able time in order to avoid such interference or jeopardi-  
67 zation.

68 (d) The finding of fact that is issued by the reparations  
69 investigator pursuant to subsection (b) of this section shall  
70 contain the following:

71 (1) Whether the criminally injurious conduct that is the  
72 basis for the application did occur, the date on which the  
73 conduct occurred and the exact nature of the conduct;

74 (2) If the criminally injurious conduct was reported to a  
75 law-enforcement officer or agency, the date on which the con-  
76 duct was reported and the name of the person who reported  
77 the conduct; or, the reasons why the conduct was not re-  
78 ported to a law-enforcement officer or agency; or, the rea-  
79 sons why the conduct was not reported to a law-enforcement  
80 officer or agency within seventy-two hours after the conduct  
81 occurred;

82 (3) The exact nature of the injuries that the victim  
83 sustained as a result of the criminally injurious conduct;

84 (4) If the reparations investigator is recommending that  
85 an award be made, a specific itemization of the economic loss  
86 that was sustained by the victim, the claimant or a dependent  
87 as a result of the criminally injurious conduct;

88 (5) If the reparations investigator is recommending that an  
89 award be made, a specific itemization of any benefits or advan-  
90 tages that the victim, the claimant or a dependent has received  
91 or is entitled to receive from any collateral source for eco-  
92 nomic loss that resulted from the conduct;

93 (6) Whether the claimant is the spouse, parent, child,  
94 brother or sister of the offender, or is similarly related to an  
95 accomplice of the offender who committed the criminally in-  
96 jurious conduct;

97 (7) Any information which might be a basis for a reason-  
98 able reduction or denial of a claim because of contributory  
99 misconduct of the claimant or of a victim through whom he  
100 or she claims;

101 (8) Any additional information that the reparations in-  
102 vestigator deems to be relevant to the evaluation of the claim.

103 (e) The recommendation that is issued by the reparations  
104 investigator pursuant to subsection (b) of this section shall  
105 contain the following:

106 (1) Whether an award of reparations should be made to  
107 the claimant and the amount of the award;

108 (2) If the reparations investigator recommends that an  
109 award not be made to the claimant, the reason for his decision.

110 (f) The reparations investigator shall file his finding of  
111 fact and recommendation with the clerk within six months  
112 after the filing of the application: *Provided*, That where  
113 there is active criminal prosecution of the person or persons  
114 alleged to have committed the criminally injurious conduct  
115 which is the basis for the claimant's claim, the reparations  
116 investigator shall file his finding of fact and recommendation  
117 within six months after the first of any final convictions or  
118 other final determinations as to innocence or guilt, or any  
119 other final disposition of criminal proceedings. In any case,  
120 an additional time period may be provided by order of any  
121 court of claims judge or commissioner upon good cause shown.

#### §14-2A-28. Retroactive effect of amendments.

1 Amendments made to the provisions of this article during the  
2 regular session of the Legislature in the year one thousand  
3 nine hundred eighty-four, shall be of retroactive effect to the  
4 extent that such amended provisions shall apply to all cases  
5 pending before the court of claims on the effective date of  
6 the act of the Legislature which effects such amendment.

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## CHAPTER 35

(Com. Sub. for H. P. 1406—By Delegate Starcher and Delegate Faircloth)

[Passed March 5, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

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

**CLAIMS AGAINST THE STATE.**

- §1. Finding and declaring certain claims against the department of corrections; the department of health; the farm management commission; and the public employees insurance board, to be moral obligations of the state and directing payment thereof.**

1 The Legislature has heretofore made findings of fact that  
 2 the state has received the benefit of the commodities and  
 3 services rendered by certain claimants herein and has consid-  
 4 ered claims against the state, the department of corrections,  
 5 the department of health, the farm management commission,  
 6 and the public employees insurance board, agencies thereof,  
 7 which have arisen due to overexpenditures of the departmental  
 8 appropriations by officers of such state spending unit, such  
 9 claims having been previously considered by the court of  
 10 claims which also found that the state has received the benefit  
 11 of the commodities and services rendered by each claimant,  
 12 but were denied by the court of claims on the purely statutory  
 13 grounds that to allow such claims would be condoning illegal  
 14 acts contrary to the laws of the state. The Legislature pursuant  
 15 to its findings of fact and also by the adoption of the findings  
 16 of fact by the court of claims as its own, and, while not con-  
 17 doning such illegal acts, hereby declares it to be the moral  
 18 obligation of the state to pay each such claim in the amount  
 19 specified below, and directs the auditor to issue warrants upon  
 20 receipt of a properly executed requisition supported by an  
 21 itemized invoice, statement or other satisfactory document as  
 22 required by section ten, article three, chapter twelve of the  
 23 code of West Virginia, one thousand nine hundred thirty-one,  
 24 as amended, for the payment thereof out of any fund appro-  
 25 priated and available for the purpose.

26 (a) *Claims against the Department of Corrections:*

27 (TO BE PAID FROM GENERAL REVENUE FUND)

28	(1) Appalachian Power Company .....	\$ 28,029.79
29	(2) Bluefield Community Hospital .....	\$ 275.00
30	(3) General Telephone Company of the SE ..	\$ 1,264.30

31	(4) Greenbrier Valley Hospital .....	\$ 4,470.34
32	(5) Humana Hospital Greenbrier Valley ____	\$ 408.15
33	(6) Memorial General Hospital Association,	
34	Inc. ....	\$314,554.27
35	(7) Ohio Valley Medical Center, Inc. ....	\$ 15,391.43
36	(8) Potomac Valley Hospital .....	\$ 56.10
37	(9) Reynolds Memorial Hospital, Inc. ....	\$154,947.08

38 (b) *Claims against the Department of Health:*

39 (TO BE PAID FROM GENERAL REVENUE FUND)

40	(1) Board of Trustees of Cabell County General	
41	Hospital (The), aka Cabell	
42	Huntington Hospital .....	\$ 22,991.31
43	(2) Nuclear Medicine Services, Inc. ....	\$ 152.70
44	(3) Ohio Valley Medical Center, Inc. ....	\$ 3,000.00
45	(4) St. Mary's Hospital .....	\$ 97,993.90
46	(5) Stonewall Jackson Memorial Hospital ____	\$ 557.58

47 (c) *Claim against the Farm Management Commission:*

48 (TO BE PAID FROM GENERAL REVENUE FUND)

49	(1) Kerr Gooch, d/b/a	
50	Southern Glass Service .....	\$ 492.00

51 (d) *Claim against the Public Employees Insurance Board:*

52 (TO BE PAID FROM GENERAL REVENUE FUND)

53	(1) Ellery H. Morgan .....	\$ 1,685.24
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## CHAPTER 36

(Com. Sub. for H. B. 1373—By Delegate Starcher and Delegate Faircloth)

[Passed March 5, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payments thereof.

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

## CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the alcohol beverage control commissioner; attorney general; Blennerhassett historical park commission; board of regents; department of agriculture; department of corrections; department of finance and administration; department of health; department of highways; department of human services; department of motor vehicles; department of natural resources; department of public safety; division of vocational rehabilitation; human rights commission; public employees insurance board; public legal services; secretary of state; state auditor; state tax department; supreme court of appeals; and West Virginia radiologic technology board of examiners, to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and  
 2 recommendations reported to it by the court of claims con-  
 3 cerning various claims against the state and agencies thereof,  
 4 and in respect to each of the following claims the Legislature  
 5 adopts those findings of fact as its own, and hereby declares  
 6 it to be the moral obligation of the state to pay each such  
 7 claim in the amount specified below, and directs the auditor  
 8 to issue warrants for the payment thereof out of any fund  
 9 appropriated and available for the purpose.

10 (a) *Claim against the Alcohol Beverage Control*  
 11 *Commissioner:*

12 (TO BE PAID FROM SPECIAL REVENUE FUND)

13 (1) Pauline G. Malcomb ..... \$ 3,000.00

14 (b) *Claim against the Attorney General:*

15 (TO BE PAID FROM GENERAL REVENUE FUND)

16 (1) Phyllis Jean Cole, Clerk of the Circuit  
 17 Court of Kanawha County ..... \$ 15.00

18 (c) *Claim against the Blennerhassett Historical*  
 19 *Park Commission:*

20 (TO BE PAID FROM SPECIAL REVENUE FUND)

21 (1) Kanawha River Docking and  
 22 Marine, Inc. .... \$ 983.40

23 (d) *Claims against the Board of Regents:*

24 (TO BE PAID FROM GENERAL REVENUE FUND)

25	(1)	Bailey, Incorporated .....	\$	131.01
26	(2)	Donald F. Udell .....	\$	102.00

27 (TO BE PAID FROM SPECIAL REVENUE FUND)

28	(1)	Appalachian Engineers, Inc. ....	\$	9,434.53
29		from Acct. No. 8600		
30	(2)	Bethany L. Browning .....	\$	75.72
31		from Acct. No. 9280-00		
32	(3)	Judith Ann Hall .....	\$	469.41
33		from Acct. No. 9280-00		
34	(4)	Fannie Lee Malone .....	\$	656.00
35		from Acct. No. 9280-00		
36	(5)	Andrew S. McGalla .....	\$	610.00
37		from Acct. No. 9280-01		
38	(6)	Nora A. Miller .....	\$	225.00
39		from Acct. No. 9280-00		
40	(7)	New River Building Company .....	\$	40,779.08
41		from Acct. No. 8835		
42	(8)	S. S. Logan Packing Company .....	\$	819.86
43		from Acct. No. 8628		
44	(9)	Edward Sowell .....	\$	456.00
45		from Acct. No. 8610-40		
46	(10)	Elaine B. Stemple .....	\$	150.00
47		from Acct. No. 9280-00		
48	(11)	Bobbie E. Stevens .....	\$	467.04
49		from Acct. No. 8610-40		
50	(12)	Whitten Corporation .....	\$	18,627.20
51		from Acct. No. 8860-79		

52 (e) *Claim against the Department of*  
53 *Agriculture:*

54 (TO BE PAID FROM GENERAL REVENUE FUND)

55	(1)	Goodyear Tire and Rubber Company		
56		(The) .....	\$	174.54

57 (f) *Claims against the Department of*  
58 *Corrections:*

59	(TO BE PAID FROM GENERAL REVENUE FUND)	
60	(1) Zeik Auvil .....	\$ 519.00
61	(2) C. W. Lewis, Inc. ....	\$ 410.20

62 (g) *Claims against the Department of*  
63 *Finance and Administration:*

64	(TO BE PAID FROM GENERAL REVENUE FUND)	
65	(1) Avery Label, Div. of Avery	
66	International .....	\$ 100.00
67	(2) Consolidated Rail Corporation .....	\$ 1,950.00
68	(3) Johnson Controls, Inc. ....	\$ 6,676.63
69	(4) Sperry Univac .....	\$ 3,057.00

70 (h) *Claims against the Department of Health:*

71	(TO BE PAID FROM GENERAL REVENUE FUND)	
72	(1) A. H. Robins Company .....	\$ 208.68
73	(2) Beckman Instruments, Inc. ....	\$ 198.50
74	(3) Aaron D. Cottle .....	\$ 45.00
75	(4) Goodwin Drug Company .....	\$ 47.39
76	(5) Holzer Medical Center .....	\$ 99.00
77	(6) Kramer's Photo Supply, Inc. ....	\$ 31.79
78	(7) Randy Paul Lowe .....	\$ 15.00
79	(8) Michie Company (The) .....	\$ 163.31
80	(9) Miller's Implement, Inc. ....	\$ 92.65
81	(10) Francis L. Parker .....	\$ 8,000.00
82	(11) Roane General Hospital .....	\$ 1,020.03
83	(12) Lillian Rose .....	\$ 10.50
84	(13) Edwin O. Walker .....	\$ 30.00
85	(14) Pearl Patsy Webb .....	\$ 36.00
86	(15) West Virginia Telephone Company .....	\$ 274.64

87 (i) *Claims against the Department of Highways:*

88	(TO BE PAID FROM STATE ROAD FUND)	
89	(1) Terry Ahalt .....	\$ 172.46
90	(2) Wayne K. Baker, d/b/a Baker Coal	
91	Company .....	\$ 9,000.00
92	(3) James Burcham and Patricia	
93	J. Burcham .....	\$ 1,605.33



94	(4)	Armeda Jean Bush .....	\$ 1,050.00
95	(5)	Butler Corporation .....	\$ 752.00
96	(6)	Stella Cecil, Admin. of the Estate of	
97		O'Dell M. Cecil, deceased .....	\$137,328.25
98	(7)	City of Shinnston .....	\$ 801.50
99	(8)	Betty Cook .....	\$ 18,910.00
100	(9)	Larry R. Dexter & Sharon K. Dexter ....	\$ 375.61
101	(10)	Dial-Page .....	\$ 250.00
102	(11)	Foster & Creighton Company and	
103		Vecellio & Grogan, Inc. ....	\$ 2,499.74
104	(12)	Millard A. Harmon .....	\$ 14,805.79
105	(13)	U. G. Harrison and Edna Harrison ....	\$ 8,800.00
106	(14)	Lois V. Haynes and E. Robert Haynes ..	\$ 50,000.00
107	(15)	High Voltage Systems, Inc. ....	\$ 59,415.88
108	(16)	George B. Hissom .....	\$ 106.91
109	(17)	Clyde Holloway, as next friend of	
110		Kay Lee Holloway .....	\$ 1,252.57
111	(18)	Interstate Equipment Sales, Inc. ....	\$ 10,100.00
112	(19)	James C. Dawes Company, Inc. ....	\$ 912.00
113	(20)	James E. Jones and Ruth Jones .....	\$ 5,000.00
114	(21)	Mr. and Mrs. David Leadman .....	\$ 1,500.00
115	(22)	Norman Lewis .....	\$ 3,000.00
116	(23)	Logan Corporation .....	\$ 1,089.50
117	(24)	Mabscott Supply Company .....	\$ 529.00
118	(25)	Fred Marcum .....	\$ 275.92
119	(26)	Robert Marcum and Loretta Marcum	\$ 10,799.00
120	(27)	Elsie Mast ..	\$ 20,700.62
121	(28)	Elsie Mast and Willis Mast, d/b/a	
122		Willis Mast Livestock Trucking .....	\$ 1,000.00
123	(29)	Elliott E. Maynard, III ..	\$ 4,953.00
124	(30)	Lillian Akers Meade, Admin. of the	
125		Estate of Gary Wayne Akers, deceased	\$ 44,050.34
126	(31)	Lillian Akers Meade, as guardian	
127		for and on behalf of Christopher	
128		Lewis Akers .....	\$ 38,061.33
129	(32)	Lillian Akers Meade, as guardian	
130		for and on behalf of Steven	
131		Wayne Akers .....	\$ 38,061.33
132	(33)	Paul E. Miller and	
133		Marguerite Miller .....	\$ 39,000.00

134	(34)	William G. Poling and	
135		Delores J. Poling .....	\$ 500.00
136	(35)	Brenda Ann Poole and	
137		Michael Ray Poole .....	\$ 125.50
138	(36)	Shelly & Sands, Inc. ....	\$ 50,665.56
139	(37)	Melvin Sickles .....	\$ 444.00
140	(38)	Sandra Stiltner .....	\$ 453.11
141	(39)	Charles D. Stout and Joyce L. Stout ...	\$ 1,000.00
142	(40)	Harold C. Swiger .....	\$ 292.01
143	(41)	Vecellio & Grogan, Inc. ....	\$ 14,842.20
144	(42)	Wayne Concrete Company .....	\$ 13,477.88
145	(43)	John J. Wright .....	\$ 1,350.00
146	(44)	Peter Yerkovich, Jr. ....	\$ 84.62
147	(j)	<i>Claim against the Department of Human Services:</i>	
148		(TO BE PAID FROM GENERAL REVENUE FUND)	
149	(1)	John Casey Peters .....	\$ 2,040.03
150	(k)	<i>Claims against the Department of</i>	
151		<i>Motor Vehicles:</i>	
152		(TO BE PAID FROM STATE ROAD FUND)	
153	(1)	Moore Business Forms, Inc. ....	\$ 763.92
154	(2)	Pendleton County Bank .....	\$ 274.67
155	(3)	3M Company .....	\$ 3,828.00
156	(l)	<i>Claim against the Department of</i>	
157		<i>Natural Resources:</i>	
158		(TO BE PAID FROM GENERAL REVENUE FUND)	
159	(1)	Lawhead Press, Inc. (The) .....	\$ 561.05
160	(m)	<i>Claims against the Department of</i>	
161		<i>Public Safety:</i>	
162		(TO BE PAID FROM GENERAL REVENUE FUND)	
163	(1)	Appalachian Power Company .....	\$ 136.16
164	(2)	Eagle Coal and Dock Company, Inc. ..	\$ 5,950.00
165	(3)	Greenbrier Valley Soil	
166		Conservation District .....	\$ 338.10
167	(4)	Hanover Shoe, Inc. (The) .....	\$ 1,511.40

168	(5)	Machinery & Systems Division,		
169		a Division of Carrier Corp. ....	\$	833.00
170	(6)	Pagano Industries, Inc. ....	\$	1,560.00
171	(7)	Thompson's of Morgantown, Inc. ....	\$	295.32
172	(n)	<i>Claim against the Division of</i>		
173		<i>Vocational Rehabilitation:</i>		
174		(TO BE PAID FROM SPECIAL REVENUE FUND)		
175	(1)	Roentgen Diagnostics, Inc. ....	\$	75.00
176	(o)	<i>Claim against the Human Rights Commission:</i>		
177		(TO BE PAID FROM GENERAL REVENUE FUND)		
178	(1)	Janet T. Surface .....	\$	46.09
179	(p)	<i>Claim against Public Employees</i>		
180		<i>Insurance Board:</i>		
181		(TO BE PAID FROM GENERAL REVENUE FUND)		
182	(1)	Vera B. Ramsey .....	\$	332.76
183	(q)	<i>Claim against Public Legal Services:</i>		
184		(TO BE PAID FROM GENERAL REVENUE FUND)		
185	(1)	John R. Lukens .....	\$	441.15
186	(r)	<i>Claims against the Secretary of State:</i>		
187		(TO BE PAID FROM GENERAL REVENUE FUND)		
188	(1)	Moore Business Forms, Inc. ....	\$	774.55
189	(2)	Simplex Time Recorder Co. ....	\$	505.76
190	(s)	<i>Claim against the State Auditor:</i>		
191		(TO BE PAID FROM GENERAL REVENUE FUND)		
192	(1)	Department of Employment Security ..	\$	168,881.28
193	(t)	<i>Claim against the State Tax Department:</i>		
194		(TO BE PAID FROM GENERAL REVENUE FUND)		
195	(1)	Standard Publishing .....	\$	1,304.00
196	(u)	<i>Claims against the Supreme</i>		
197		<i>Court of Appeals:</i>		

198	(TO BE PAID FROM GENERAL REVENUE FUND)	
199	(1) Judy W. Chontos .....	\$ 56.80
200	(2) Lawyers Co-Operative Publishing	
201	Company .....	\$ 6,865.65
202	(v) <i>Claim against the West Virginia</i>	
203	<i>Radiologic Technology Board</i>	
204	<i>of Examiners:</i>	
205	(TO BE PAID FROM SPECIAL REVENUE FUND)	
206	(1) Elvin D. Slater .....	\$ 109.20
207	The Legislature finds that the above moral obligations and	
208	the appropriations made in satisfaction thereof shall be the	
209	full compensation for all claimants, and that prior to the pay-	
210	ments to any claimant provided for in this bill, the court of	
211	claims shall receive a release from said claimant releasing any	
212	and all claims for moral obligations arising from the mat-	
213	ters considered by the Legislature in the finding of the moral	
214	obligations and the making of the appropriations for said	
215	claimant. The court of claims shall deliver all releases ob-	
216	tained from claimants to the department against which the	
217	claim was allowed.	

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## CHAPTER 37

(Com. Sub. for H. B. 1407—By Delegate Starcher and Delegate Faircloth)

[Passed March 5, 1984; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims for reparations of citizens of West Virginia who were innocent victims of crimes occurring in this state 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:*

### REPARATION AWARDS TO VICTIMS OF CRIMES.

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

1 The Legislature has duly considered the findings of fact  
 2 and recommendations for awards reported to it by the court  
 3 of claims in respect to the following named claimants, citizens  
 4 of West Virginia, who were innocent victims of crime within  
 5 this state and entitled to reparations; and in respect to each of  
 6 such named claims the Legislature adopts those findings of  
 7 fact as its own, hereby declares it to be the moral obligation of  
 8 the state to pay each such claimant in the amount specified  
 9 below, and directs the auditor to issue warrants for the pay-  
 10 ment thereof out of any fund appropriated and available for  
 11 the purpose.

12 *Claims for crime victims reparation awards:*

13 (TO BE PAID FROM CRIME VICTIMS REPARATION FUND)

14	(1) Herbert K. Ashworth .....	\$ 500.00
15	(2) Herbert K. Ashworth, as guardian 16 of Kenneth Scott Ashworth .....	\$ 6,500.00
17	(3) Herbert K. Ashworth, as guardian 18 of Kevin Duane Ashworth .....	\$ 6,500.00
19	(4) Herbert K. Ashworth, as guardian 20 of Patricia Lynn Ashworth .....	\$ 6,500.00
21	(5) Deno Biondillo .....	\$ 7,846.95
22	(6) Elsie M. Cook .....	\$ 1,024.09
23	(7) Joseph H. Cooper .....	\$ 9,040.41
24	(8) Linda R. Cottrell .....	\$ 678.12
25	(9) Ray F. Dodd .....	\$ 1,466.07
26	(10) Mary Jeraldine Fletcher .....	\$ 4,765.35
27	(11) Josephine E. Ganoe .....	\$ 500.00
28	(12) Jessie M. Lambert .....	\$ 8,364.22
29	(13) James R. Lawhon .....	\$ 5,343.60
30	(14) Glenna M. Miller .....	\$ 75.57
31	(15) Rodney A. Miller .....	\$ 27.61
32	(16) Harry A. Neider, Jr., executor of the 33 estate of Harry A. Neider, Sr. ....	\$ 3,553.99
34	(17) Mary Helen Peters, administratrix 35 of the estate of Candace Leigh Henline	\$ 490.00
36	(18) Mary Helen Peters, guardian of 37 Jamie Lynn Henline .....	\$ 9,750.00
38	(19) Mary Helen Peters, guardian of 39 Jodie Lee Henline .....	\$ 9,750.00

40	(20) Brian K. Price .....	\$ 13,400.00
41	(21) Gregory D. Roberts .....	\$ 12,060.00
42	(22) Guardian of Jeffrey Wayne Roberts .....	\$ 7,940.00
43	(23) James J. Seidl .....	\$ 748.02
44	(24) George M. Stathakis, administrator of	
45	the estate of Frances Urania Metzdorf ..	\$ 500.00
46	(25) Gary R. Stevens .....	\$ 1,507.89
47	(26) James V. Vizzari .....	\$ 20,000.00
48	(27) Paul E. White .....	\$ 11,563.92
		<hr/>
49	Total .....	\$150,395.81

50     The Legislature finds that the above moral obligations and  
51 the appropriations made in satisfaction thereof shall be the full  
52 compensation for all claimants herein; provided that any  
53 claimant herein who, subsequent to the payment of an award,  
54 receives or recovers benefits or advantages for the economic  
55 loss not prior considered by the court of claims in the course  
56 of and in reduction of the award of reparations, shall inform  
57 the court of claims and crime victims reparation fund of such  
58 recovery for determination of the amounts thereof and require-  
59 ment for the deposit thereof in the crime victims reparation  
60 fund.

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## CHAPTER 38

(S. B. 171—By Senator Palumbo and Senator Harman)

[Passed March 7, 1984; in effect ninety days from passage. Approved by the Governor.]

**AN ACT** to amend and reenact chapter thirty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the uniform condominium act; short title; applicability; definitions; variation by agreement; separate titles and taxation; applicability of local ordinances, regulations and building codes; eminent domain; supplemental general principles of law applicable; construction against implicit repeal; uniformity of application and construction; severability; unconscionable agreement or term of contract; obligation of good faith;

remedies to be liberally administered; creation of condominium; unit boundaries; construction and validity of declaration and bylaws; description of units; contents of declaration; leasehold condominiums; allocation of common element interests, votes and common expense liabilities; limited common elements; plats and plans; exercise of development rights; alterations of units; relocation of boundaries between adjoining units; subdivision or conversion of units; monuments as boundaries; use of condominium for sales purposes; easement rights; amendment of declaration; termination of condominium; rights of secured lenders; master associations; merger or consolidation of condominiums; organization of unit owners' association; powers of unit owners' association; executive board members and officers; transfer of special declarant rights; termination of contracts and leases of declarant; bylaws; upkeep of the condominium; meetings; quorums; voting; proxies; tort and contract liability; conveyance or encumbrance of common elements; insurance; surplus funds; assessments for common expenses; lien for assessments; other liens affecting condominium; association records; association as trustee; applicability; waiver; liability for public offering statement requirements; public offering statement for condominiums subject to development rights; time shares; conversion condominiums; condominium securities; purchaser's right to cancel; resales of units; escrow of deposits; release of liens; conversion buildings; warranties; effect of violation on rights of action; attorney's fees; labeling of promotional material; declarant's obligation to complete and restore; and substantial completion of units.

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

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

#### **CHAPTER 36B. UNIFORM CONDOMINIUM ACT.**

##### **Article**

- 1. General Provisions.**
- 2. Creation, Alterations and Termination of Condominiums.**
- 3. Management of Condominium.**
- 4. Protection of Condominium Purchasers.**

**ARTICLE 1. GENERAL PROVISIONS.**

- §36B-1-101. Short title.
- §36B-1-102. Applicability.
- §36B-1-103. Definitions.
- §36B-1-104. Variation by agreement.
- §36B-1-105. Separate titles and taxation.
- §36B-1-106. Applicability of local ordinances, regulations and building codes.
- §36B-1-107. Eminent domain.
- §36B-1-108. Supplemental general principles of law applicable.
- §36B-1-109. Construction against implicit repeal.
- §36B-1-110. Uniformity of application and construction.
- §36B-1-111. Severability.
- §36B-1-112. Unconscionable agreement or term of contract.
- §36B-1-113. Obligation of good faith.
- §36B-1-114. Remedies to be liberally administered.

**§36B-1-101. Short title.**

- 1 This chapter shall be known and may be cited as the
- 2 "Uniform Condominium Act."

**§36B-1-102. Applicability.**

- 1 (a) This chapter applies to all condominiums created
- 2 within this state after the effective date of this chapter.
- 3 Sections 1-105 (separate titles and taxation), 1-106
- 4 (applicability of local ordinances, regulations and building
- 5 codes), 1-107 (eminent domain), 2-103 (construction and
- 6 validity of declaration and bylaws), 2-104 (description of
- 7 units), 3-102(a) (1) through (6) and (11) through (16) (powers
- 8 of unit owners' association), 3-111 (tort and contract
- 9 liability), 3-116 (lien for assessments), 3-118 (association
- 10 records), 4-109 (resales of units) and 4-115 (effect of
- 11 violation on rights of action; attorney's fees), and section 1-
- 12 103 (definitions) to the extent necessary in construing any of
- 13 those sections, apply to all condominiums created in this
- 14 state before the effective date of this chapter; but those
- 15 sections apply only with respect to events and circumstances
- 16 occurring after the effective date of this chapter and do not
- 17 invalidate existing provisions of the declaration, bylaws, or
- 18 plats or plans of those condominiums.

- 19 (b) The provisions of chapter one hundred fifty-three,
- 20 acts of the Legislature, one thousand nine hundred sixty-
- 21 three, do not apply to condominiums created after the



22 effective date of this chapter and do not invalidate any  
23 amendment to the declaration, rules, bylaws, plats and plans  
24 and code of regulations of any condominium created before  
25 the effective date of this chapter if the amendment would be  
26 permitted by this chapter. The amendment must be adopted  
27 in conformity with the procedures and requirements  
28 specified by those instruments and by chapter one hundred  
29 fifty-three, acts of the Legislature, one thousand nine  
30 hundred sixty-three. If the amendment grants to any person  
31 any rights, powers or privileges permitted by this chapter, all  
32 correlative obligations, liabilities and restrictions in this  
33 chapter also apply to that person.

34 (c) This chapter does not apply to condominiums or  
35 units located outside this state, but the public offering  
36 statement provisions (sections 4-102 through 4-108) apply  
37 to all contracts for the disposition thereof signed in this  
38 state by any party unless exempt under section 4-101(b).

39 (d) The provisions of this chapter shall apply to all  
40 condominiums to the extent such provisions conflict or are  
41 inconsistent with the provisions of chapter one hundred  
42 fifty-three, acts of the Legislature, one thousand nine  
43 hundred sixty-three: *Provided*, That the provisions of this  
44 chapter shall not modify, limit or nullify any rights, duties,  
45 or obligations created or existing under any declaration,  
46 bylaws or plats or plans of condominiums created in this  
47 state before the effective date of this chapter.

### §36B-1-103. Definitions.

1 In the declaration and bylaws, unless specifically  
2 provided otherwise or the context otherwise requires, and  
3 in this chapter:

4 (1) "Affiliate of a declarant" means any person who  
5 controls, is controlled by, or is under common control with a  
6 declarant. A person "controls" a declarant if the person (i) is  
7 a general partner, officer, director or employer of the  
8 declarant, (ii) directly or indirectly or acting in concert with  
9 one or more other persons, or through one or more  
10 subsidiaries, owns, controls, holds with power to vote, or  
11 holds proxies representing, more than twenty percent of the  
12 voting interests in the declarant, (iii) controls in any manner

13 the election of a majority of the directors of the declarant, or  
14 (iv) has contributed more than twenty percent of the capital  
15 of the declarant. A person “is controlled by” a declarant if  
16 the declarant (i) is a general partner, officer, director or  
17 employer of the person, (ii) directly or indirectly or acting in  
18 concert with one or more other persons, or through one or  
19 more subsidiaries, owns, controls, holds with power to vote,  
20 or holds proxies representing, more than twenty percent of  
21 the voting interests in the person, (iii) controls in any  
22 manner the election of a majority of the directors of the  
23 person, or (iv) has contributed more than twenty percent of  
24 the capital of the person. Control does not exist if the  
25 powers described in this paragraph are held solely as  
26 security for an obligation and are not exercised.

27 (2) “Allocated interests” means the undivided interest  
28 in the common elements, the common expense liability and  
29 votes in the association allocated to each unit.

30 (3) “Association” or “unit owners’ association” means  
31 the unit owners’ association organized under section 3-101.

32 (4) “Common elements” means all portions of a  
33 condominium other than the units.

34 (5) “Common expenses” means expenditures made by  
35 or financial liabilities of the association, together with any  
36 allocations to reserves.

37 (6) “Common expense liability” means the liability for  
38 common expenses allocated to each unit pursuant to section  
39 2-107.

40 (7) “Condominium” means real estate, portions of  
41 which are designated for separate ownership and the  
42 remainder of which is designated for common ownership  
43 solely by the owners of those portions. Real estate is not a  
44 condominium unless the undivided interests in the common  
45 elements are vested in the unit owners.

46 (8) “Conversion building” means a building that at any  
47 time before creation of the condominium was occupied  
48 wholly or partially by persons other than purchasers and  
49 persons who occupy with the consent of purchasers.

50 (9) "Declarant" means any person or group of persons  
51 acting in concert who (i) as part of a common promotional  
52 plan, offers to dispose of his or its interest in a unit not  
53 previously disposed of, or (ii) reserves or succeeds to any  
54 special declarant right.

55 (10) "Declaration" means any instruments, however  
56 denominated, that create a condominium and any  
57 amendments to those instruments.

58 (11) "Development rights" means any right or  
59 combination of rights reserved by a declarant in the  
60 declaration to (i) add real estate to a condominium; (ii)  
61 create units, common elements or limited common  
62 elements within a condominium; (iii) subdivide units or  
63 convert units into common elements; or (iv) withdraw real  
64 estate from a condominium.

65 (12) "Dispose" or "disposition" means a voluntary  
66 transfer to a purchaser of any legal or equitable interest in a  
67 unit, but does not include the transfer or release of a  
68 security interest.

69 (13) "Executive board" means the body, regardless of  
70 name, designated in the declaration to act on behalf of the  
71 association.

72 (14) "Identifying number" means a symbol or address  
73 that identifies only one unit in a condominium.

74 (15) "Leasehold condominium" means a condominium  
75 in which all or a portion of the real estate is subject to a  
76 lease, the expiration or termination of which will terminate  
77 the condominium or reduce its size.

78 (16) "Limited common element" means a portion of the  
79 common elements allocated by the declaration or by  
80 operation of section 2-102(2) or (4) for the exclusive use of  
81 one or more but fewer than all the units.

82 (17) "Master association" means an organization  
83 described in section 2-120, whether or not it is also an  
84 association described in section 3-101.

85 (18) "Mortgage" means either a mortgage or a deed of  
86 trust.

87 (19) "Offering" means any advertisement, inducement,  
88 solicitation or attempt to encourage any person to acquire  
89 any interest in a unit, other than as security for an  
90 obligation. An advertisement in a newspaper or other  
91 periodical of general circulation, or in any broadcast  
92 medium to the general public, of a condominium not located  
93 in this state, is not an offering if the advertisement states  
94 that an offering may be made only in compliance with the  
95 law of the jurisdiction in which the condominium is located.

96 (20) "Person" means a natural person, corporation,  
97 business trust, estate, trust, partnership, association, joint  
98 venture, government, governmental subdivision or agency,  
99 or other legal or commercial entity. (In the case of a land  
100 trust, however, "person" means the beneficiary of the trust  
101 rather than the trust or the trustee.)

102 (21) "Purchaser" means any person, other than a  
103 declarant or a person in the business of selling real estate for  
104 his own account, who by means of a voluntary transfer  
105 acquires a legal or equitable interest in a unit, other than (i)  
106 a leasehold interest (including renewal options) of less than  
107 twenty years, or (ii) as security for an obligation.

108 (22) "Real estate" means any leasehold or other estate or  
109 interest in, over, or under land, including structures,  
110 fixtures, and other improvements and interests which by  
111 custom, usage or law pass with a conveyance of land  
112 though not described in the contract of sale or instrument of  
113 conveyance. "Real estate" includes parcels with or without  
114 upper or lower boundaries, and spaces that may be filled  
115 with air or water.

116 (23) "Residential purposes" means use for dwelling or  
117 recreational purposes, or both.

118 (24) "Special declarant rights" means rights reserved  
119 for the benefit of a declarant to (i) complete improvements  
120 indicated on plats and plans filed with the declaration  
121 (section 2-109); (ii) exercise any development right (section  
122 2-110); (iii) maintain sales offices, management offices,  
123 signs advertising the condominium, and models (section  
124 2-115); (iv) use easements through the common elements for  
125 the purpose of making improvements within the

126 condominium or within real estate which may be added to  
127 the condominium (section 2-116); (v) make the  
128 condominium part of a larger condominium or a planned  
129 community (section 2-121); (vi) make the condominium  
130 subject to a master association (section 2-120); or (vii)  
131 appoint or remove any officer of the association or any  
132 master association or any executive board member during  
133 any period of declarant control (section 3-103)(c).

134 (25) "Time share" means a right to occupy a unit or any  
135 of several units during five or more separated time periods  
136 over a period of at least five years, including renewal  
137 options, whether or not coupled with an estate or interest in  
138 a condominium or a specified portion thereof.

139 (26) "Unit" means a physical portion of the  
140 condominium designated for separate ownership or  
141 occupancy, the boundaries of which are described pursuant  
142 to section 2-105(a) (5).

143 (27) "Unit owner" means a declarant or other person  
144 who owns a unit, or a lessee of a unit in a leasehold  
145 condominium whose lease expires simultaneously with any  
146 lease the expiration or termination of which will remove the  
147 unit from the condominium, but does not include a person  
148 having an interest in a unit solely as security for an  
149 obligation.

#### **§36B-1-104. Variation by agreement.**

1 Except as expressly provided in this chapter, provisions of  
2 this chapter may not be varied by agreement, and rights  
3 conferred by this chapter may not be waived. A declarant  
4 may not act under a power of attorney, or use any other  
5 device, to evade the limitations or prohibitions of this  
6 chapter or the declaration.

#### **§36B-1-105. Separate titles and taxation.**

1 (a) If there is any unit owner other than a declarant,  
2 each unit that has been created, together with its interest in  
3 the common elements, constitutes for all purposes a  
4 separate parcel of real estate.

5 (b) If there is any unit owner other than a declarant,

6 each unit must be separately taxed and assessed, and no  
7 separate tax or assessment may be rendered against any  
8 common elements for which a declarant has reserved no  
9 development rights.

10 (c) Any portion of the common elements for which the  
11 declarant has reserved any development right must be  
12 separately taxed and assessed against the declarant, and  
13 the declarant alone is liable for payment of those taxes.

14 (d) If there is no unit owner other than a declarant, the  
15 real estate comprising the condominium may be taxed and  
16 assessed in any manner provided by law.

**§36B-1-106. Applicability of local ordinances, regulations and building codes.**

1 A zoning, subdivision, building code or other real estate  
2 use law, ordinance or regulation may not prohibit the  
3 condominium form of ownership or impose any  
4 requirement upon a condominium which it would not  
5 impose upon a physically identical development under a  
6 different form of ownership. Otherwise, no provision of this  
7 chapter invalidates or modifies any provision of any zoning,  
8 subdivision, building code, or other real estate use law,  
9 ordinance or regulation.

**§36B-1-107. Eminent domain.**

1 (a) If a unit is acquired by eminent domain, or if part of a  
2 unit is acquired by eminent domain leaving the unit owner  
3 with a remnant which may not practically or lawfully be  
4 used for any purpose permitted by the declaration, the  
5 award must compensate the unit owner for his unit and its  
6 interest in the common elements whether or not any  
7 common elements are acquired. Upon acquisition, unless  
8 the decree otherwise provides, that unit's allocated  
9 interests are automatically reallocated to the remaining  
10 units in proportion to the respective allocated interests of  
11 those units before the taking, and the association shall  
12 promptly prepare, execute and record an amendment to the  
13 declaration reflecting the reallocations. Any remnant of a  
14 unit remaining after part of a unit is taken under this  
15 subsection is thereafter a common element.

16 (b) Except as provided in subsection (a), if part of a unit  
17 is acquired by eminent domain, the award must compensate  
18 the unit owner for the reduction in value of the unit and its  
19 interest in the common elements, whether or not any  
20 common elements are acquired. Upon acquisition, unless  
21 the decree otherwise provides, (1) that unit's allocated  
22 interests are reduced in proportion to the reduction in the  
23 size of the unit, or on any other basis specified in the  
24 declaration, and (2) the portion of the allocated interests  
25 divested from the partially acquired unit are automatically  
26 reallocated to that unit and the remaining units in  
27 proportion to the respective allocated interest of those units  
28 before the taking, with the partially acquired unit  
29 participating in the reallocation on the basis of its reduced  
30 allocated interest.

31 (c) If part of the common elements is acquired by  
32 eminent domain, the portion of the award attributable to  
33 the common elements taken must be paid to the association.  
34 Unless the declaration provides otherwise, any portion of  
35 the award attributable to the acquisition of a limited  
36 common element must be equally divided among the  
37 owners of the units to which that limited common element  
38 was allocated at the time of acquisition.

39 (d) If the acquisition of common elements or the  
40 acquisition of certain units decreases the value of the  
41 remaining units by more than a de minimus amount, the  
42 award must include an amount to all remaining unit owners  
43 sufficient to compensate them for that decrease in value.  
44 For purposes of this subsection the entity authorized to  
45 exercise the right of eminent domain must give notice to all  
46 unit owners and holders of liens on units in the manner set  
47 forth in section three, article two, chapter fifty-four of this  
48 code or by certified or registered mail, return receipt  
49 requested.

50 (e) The court decree shall be recorded in every county in  
51 which any portion of the condominium is located.

**§36B-1-108. Supplemental general principles of law applicable.**

1 The principles of law and equity, including the law of

2 corporations and unincorporated associations, the law of  
3 real property and the law relative to capacity to contract,  
4 principal and agent, eminent domain, estoppel, fraud,  
5 misrepresentation, duress, coercion, mistake, receivership,  
6 substantial performance or other validating or invalidating  
7 cause supplement the provisions of this chapter, except to  
8 the extent inconsistent with this chapter.

**§36B-1-109. Construction against implicit repeal.**

1 This chapter being a general act intended as a unified  
2 coverage of its subject matter, no part of it shall be  
3 construed to be impliedly repealed by subsequent  
4 legislation if that construction can reasonably be avoided.

**§36B-1-110. Uniformity of application and construction.**

1 This chapter shall be applied and construed so as to  
2 effectuate its general purpose to make uniform the law with  
3 respect to the subject of this chapter among states enacting  
4 it.

**§36B-1-111. Severability.**

1 If any provision of this chapter or the application thereof  
2 to any person or circumstances is held invalid, the  
3 invalidity does not affect other provisions or applications of  
4 this chapter which can be given effect without the invalid  
5 provisions or application, and to this end the provisions of  
6 this chapter are severable.

**§36B-1-112. Unconscionable agreement or term of contract.**

1 (a) The court, upon finding as a matter of law that a  
2 contract or contract clause was unconscionable at the time  
3 the contract was made, may refuse to enforce the contract,  
4 enforce the remainder of the contract without the  
5 unconscionable clause, or limit the application of any  
6 unconscionable clause in order to avoid an unconscionable  
7 result.

8 (b) Whenever it is claimed, or appears to the court, that  
9 a contract or any contract clause is or may be  
10 unconscionable, the parties, in order to aid the court in  
11 making the determination, shall be afforded a reasonable  
12 opportunity to present evidence as to:



- 13 (1) The commercial setting of the negotiations;
- 14 (2) Whether a party has knowingly taken advantage of  
15 the inability of the other party reasonably to protect his  
16 interests by reason of physical or mental infirmity,  
17 illiteracy, or inability to understand the language of the  
18 agreement or similar factors;
- 19 (3) The effect and purpose of the contract or clause; and
- 20 (4) If a sale, any gross disparity, at the time of  
21 contracting, between the amount charged for the real estate  
22 and the value of the real estate measured by the price at  
23 which similar real estate was readily obtainable in similar  
24 transactions, but a disparity between the contract price and  
25 the value of the real estate measured by the price at which  
26 similar real estate was readily obtainable in similar  
27 transactions does not, of itself, render the contract  
28 unconscionable.

**§36B-1-113. Obligation of good faith.**

- 1 Every contract or duty governed by this chapter imposes  
2 an obligation of good faith in its performance or  
3 enforcement.

**§36B-1-114. Remedies to be liberally administered.**

- 1 (a) The remedies provided by this chapter shall be  
2 liberally administered to the end that the aggrieved party is  
3 put in as good a position as if the other party had fully  
4 performed. However, consequential, special or punitive  
5 damages may not be awarded except as specifically  
6 provided in this chapter or by other rule of law.
- 7 (b) Any right or obligation declared by this chapter is  
8 enforceable by judicial proceeding.

**ARTICLE 2. CREATION, ALTERATIONS AND TERMINATION OF  
CONDOMINIUMS.**

- §36B-2-101. Creation of condominium.  
§36B-2-102. Unit boundaries.  
§36B-2-103. Construction and validity of declaration and bylaws.  
§36B-2-104. Description of units.  
§36B-2-105. Contents of declaration.  
§36B-2-106. Leasehold condominiums.  
§36B-2-107. Allocation of common element interests, votes and common  
expense liabilities.

- §36B-2-108. Limited common elements.
- §36B-2-109. Plats and plans.
- §36B-2-110. Exercise of development rights.
- §36B-2-111. Alterations of units.
- §36B-2-112. Relocation of boundaries between adjoining units.
- §36B-2-113. Subdivision of units.
- §36B-2-114. Monuments as boundaries.
- §36B-2-115. Use for sales purposes.
- §36B-2-116. Easement rights.
- §36B-2-117. Amendment of declaration.
- §36B-2-118. Termination of condominium.
- §36B-2-119. Rights of secured lenders.
- §36B-2-120. Master associations.
- §36B-2-121. Merger or consolidation of condominiums.

**§36B-2-101. Creation of condominium.**

1 (a) A condominium may be created pursuant to this  
2 chapter only by recording a declaration executed in the  
3 same manner as a deed. The declaration must be recorded in  
4 every county in which any portion of the condominium is  
5 located, and must be indexed in the Grantee's index in the  
6 name of the condominium and the association and in the  
7 Grantor's index in the name of each person executing the  
8 declaration.

9 (b) A declaration or an amendment to a declaration  
10 adding units to a condominium, may not be recorded unless  
11 all structural components and mechanical systems of all  
12 buildings containing or comprising any units thereby  
13 created are substantially completed in accordance with the  
14 plans, as evidenced by a recorded certificate of completion  
15 executed by an independent engineer, surveyor or  
16 architect.

**§36B-2-102. Unit boundaries.**

1 Except as provided by the declaration:

2 (1) If walls, floors or ceilings are designated as  
3 boundaries of a unit, all lath, furring, wallboard,  
4 plasterboard, plaster, paneling, tiles, wallpaper, paint,  
5 finished flooring, and any other materials constituting any  
6 part of the finished surfaces thereof are a part of the unit,  
7 and all other portions of the walls, floors or ceilings are a  
8 part of the common elements.

9 (2) If any chute, flue, duct, wire, conduit, bearing wall,  
10 bearing column or any other fixture lies partially within  
11 and partially outside the designated boundaries of a unit,  
12 any portion thereof serving only that unit is a limited  
13 common element allocated solely to that unit, and any  
14 portion thereof serving more than one unit or any portion of  
15 the common elements is a part of the common elements.

16 (3) Subject to the provisions of subdivision (2), all spaces,  
17 interior partitions, and other fixtures and improvements  
18 within the boundaries of a unit are a part of the unit.

19 (4) Any shutters, awnings, window boxes, doorsteps,  
20 stoops, porches, balconies, patios, and all exterior doors  
21 and windows or other fixtures designed to serve a single  
22 unit, but located outside the unit's boundaries, are limited  
23 common elements allocated exclusively to that unit.

**§36B-2-103. Construction and validity of declaration and bylaws.**

1 (a) All provisions of the declaration and bylaws are  
2 severable.

3 (b) The rule against perpetuities may not be applied to  
4 defeat any provision of the declaration, bylaws, rules or  
5 regulations adopted pursuant to section 3-102 (a) (1).

6 (c) In the event of a conflict between the provisions of  
7 the declaration and the bylaws, the declaration prevails  
8 except to the extent the declaration is inconsistent with this  
9 chapter.

10 (d) Title to a unit and common elements is not rendered  
11 unmarketable or otherwise affected by reason of an  
12 insubstantial failure of the declaration to comply with this  
13 chapter. Whether a substantial failure impairs marketability  
14 is not affected by this chapter.

**§36B-2-104. Description of units.**

1 A description of a unit which sets forth the name of the  
2 condominium, the recording data for the declaration, the  
3 county in which the condominium is located, and the  
4 identifying number of the unit, is a sufficient legal  
5 description of that unit and all rights, obligations and

6 interests appurtenant to that unit which were created by  
7 the declaration or bylaws.

**§36B-2-105. Contents of declaration.**

1 (a) The declaration for a condominium must contain:

2 (1) The name of the condominium, which must include  
3 the word "condominium" or be followed by the words "a  
4 condominium," and the association;

5 (2) The name of every county in which any part of the  
6 condominium is situated;

7 (3) A legally sufficient description of the real estate  
8 included in the condominium;

9 (4) A statement of the maximum number of units which  
10 the declarant reserves the right to create;

11 (5) A description of the boundaries of each unit created  
12 by the declaration, including the unit's identifying number;

13 (6) A description of any limited common elements, other  
14 than those specified in section 2-102(2) and (4), as provided  
15 in section 2-109 (b) (10);

16 (7) A description of any real estate, except real estate  
17 subject to development rights, which may be allocated  
18 subsequently as limited common elements, other than  
19 limited common elements specified in section 2-102 (2) and  
20 (4), together with a statement that they may be so allocated;

21 (8) A description of any development rights and other  
22 special declarant rights (section 1-103 (23)) reserved by the  
23 declarant, together with a legally sufficient description of  
24 the real estate to which each of those rights applies, and a  
25 time limit within which each of those rights must be  
26 exercised;

27 (9) If any development right may be exercised with  
28 respect to different parcels of real estate at different times,  
29 a statement to that effect together with (i) either a statement  
30 fixing the boundaries of those portions and regulating the  
31 order in which those portions may be subjected to the  
32 exercise of each development right, or a statement that no

33 assurances are made in those regards, and (ii) a statement as  
34 to whether, if any development right is exercised in any  
35 portion of the real estate subject to that development right,  
36 that development right must be exercised in all or in any  
37 other portion of the remainder of that real estate;

38 (10) Any other conditions or limitations under which  
39 the rights described in subdivision (8) may be exercised or  
40 will lapse;

41 (11) An allocation to each unit of the allocated interests  
42 in the manner described in (section 2-107);

43 (12) Any restrictions on use, occupancy and alienation  
44 of the units;

45 (13) The recording data for recorded easements and  
46 licenses appurtenant to or included in the condominium or  
47 to which any portion of the condominium is or may become  
48 subject by virtue of a reservation in the declaration; and

49 (14) All matters required by sections 2-106, 2-107,  
50 2-108, 2-109, 2-115, 2-116 and 3-103 (d).

51 (b) The declaration may contain any other matters the  
52 declarant deems appropriate.

**§36B-2-106. Leasehold condominiums.**

1 (a) Any lease the expiration or termination of which  
2 may terminate the condominium or reduce its size, or a  
3 memorandum thereof, shall be recorded. Every lessor of  
4 those leases must sign the declaration, and the declaration  
5 shall state:

6 (1) The recording data for the lease or a statement of  
7 where the complete lease may be inspected;

8 (2) The date on which the lease is scheduled to expire;

9 (3) A legally sufficient description of the real estate  
10 subject to the lease;

11 (4) Any right of the unit owners to redeem the reversion  
12 and the manner whereby those rights may be exercised, or a  
13 statement that they do not have those rights;

14 (5) Any right of the unit owners to remove any  
15 improvements within a reasonable time after the expiration  
16 or termination of the lease, or a statement that they do not  
17 have those rights; and

18 (6) Any rights of the unit owners to renew the lease and  
19 the conditions of any renewal, or a statement that they do  
20 not have those rights.

21 (b) After the declaration for a leasehold condominium is  
22 recorded, neither the lessor nor his successor in interest may  
23 terminate the leasehold interest of a unit owner who makes  
24 timely payment of his share of the rent and otherwise  
25 complies with all covenants which, if violated, would  
26 entitle the lessor to terminate the lease. A unit owner's  
27 leasehold interest is not affected by failure of any other  
28 person to pay rent or fulfill any other covenant.

29 (c) Acquisition of the leasehold interest of any unit  
30 owner by the owner of the reversion or remainder does not  
31 merge the leasehold and fee simple interests unless the  
32 leasehold interests of all unit owners subject to that  
33 reversion or remainder are acquired.

34 (d) If the expiration or termination of a lease decreases  
35 the number of units in a condominium, the allocated  
36 interests shall be reallocated in accordance with section  
37 1-107(a) as though those units had been taken by eminent  
38 domain. Reallocations shall be confirmed by an  
39 amendment to the declaration prepared, executed and  
40 recorded by the association.

**§36B-2-107. Allocation of common element interests, votes  
and common expense liabilities.**

1 (a) The declaration shall allocate a fraction or  
2 percentage of undivided interests in the common elements  
3 and in the common expenses of the association, and a  
4 portion of the votes in the association, to each unit and state  
5 the formulas used to establish those allocations. Those  
6 allocations may not discriminate in favor of units owned by  
7 the declarant.

8 (b) If units may be added to or withdrawn from the  
9 condominium, the declaration must state the formulas to be

10 used to reallocate the allocated interests among all units  
11 included in the condominium after the addition or  
12 withdrawal.

13 (c) The declaration may provide: (i) That different  
14 allocations of votes shall be made to the units on particular  
15 matters specified in the declaration; (ii) for cumulative  
16 voting only for the purpose of electing members of the  
17 executive board; and (iii) for class voting on specified issues  
18 affecting the class if necessary to protect valid interests of  
19 the class. A declarant may not utilize cumulative or class  
20 voting for the purpose of evading any limitation imposed on  
21 declarants by this chapter, nor may units constitute a class  
22 because they are owned by a declarant.

23 (d) Except for minor variations due to rounding, the  
24 sums of the undivided interests in the common elements and  
25 common expense liabilities allocated at any time to all the  
26 units must each equal one if stated as fractions or one  
27 hundred percent if stated as percentages. In the event of  
28 discrepancy between an allocated interest and the result  
29 derived from application of the pertinent formulas, the  
30 allocated interest prevails.

31 (e) The common elements are not subject to partition,  
32 and any purported conveyance, encumbrance, judicial sale,  
33 or other voluntary or involuntary transfer of an undivided  
34 interest in the common elements made without the unit to  
35 which that interest is allocated, is void.

**§36B-2-108. Limited common elements.**

1 (a) Except for the limited common elements described  
2 in section 2-102(2) and (4), the declaration shall specify to  
3 which unit or units each limited common element is  
4 allocated. That allocation may not be altered without the  
5 consent of the unit owners whose units are affected.

6 (b) Except as the declaration otherwise provides, a  
7 limited common element may be reallocated by an  
8 amendment to the declaration executed by the unit owners  
9 between or among whose units the reallocation is made. The  
10 persons executing the amendment shall provide a copy  
11 thereof to the association, which shall record it. The  
12 amendment shall be recorded in the names of the parties  
13 and the condominium.

14 (c) A common element not previously allocated as a  
15 limited common element may not be so allocated except  
16 pursuant to provisions in the declaration made in  
17 accordance with section 2-105(a) (7). The allocations shall  
18 be made by amendments to the declaration.

**§36B-2-109. Plats and plans.**

1 (a) Plats and plans are a part of the declaration.  
2 Separate plats and plans are not required by this chapter if  
3 all the information required by this section is contained in  
4 either a plat or plan. Each plat and plan must be clear and  
5 legible and contain a certification that the plat or plan  
6 contains all information required by this section.

7 (b) Each plat must show:

8 (1) The name and a survey or general schematic map of  
9 the entire condominium;

10 (2) The location and dimensions of all real estate not  
11 subject to development rights, or subject only to the  
12 development right to withdraw, and the location and  
13 dimensions of all existing improvements within that real  
14 estate;

15 (3) A legally sufficient description of any real estate  
16 subject to development rights, labeled to identify the rights  
17 applicable to each parcel;

18 (4) The extent of any encroachments by or upon any  
19 portion of the condominium;

20 (5) To the extent feasible, a legally sufficient  
21 description of all easements serving or burdening any  
22 portion of the condominium;

23 (6) The location and dimensions of any vertical unit  
24 boundaries not shown or projected on plans recorded  
25 pursuant to subsection (d) and that unit's identifying  
26 number;

27 (7) The location with reference to an established datum  
28 of any horizontal unit boundaries not shown or projected on  
29 plans recorded pursuant to subsection (d) and that unit's  
30 identifying number;



31 (8) A legally sufficient description of any real estate in  
32 which the unit owners will own only an estate for years,  
33 labeled as "leasehold real estate";

34 (9) The distance between noncontiguous parcels of real  
35 estate comprising the condominium;

36 (10) The location and dimensions of limited common  
37 elements, including porches, balconies and patios, other  
38 than parking spaces and the other limited common  
39 elements described in sections 2-102 (2) and (4);

40 (11) In the case of real estate not subject to development  
41 rights, all other matters customarily shown on land surveys.

42 (c) A plat may also show the intended location and  
43 dimensions of any contemplated improvement to be  
44 constructed anywhere within the condominium. Any  
45 contemplated improvement shown must be labeled either  
46 "MUST BE BUILT" or "NEED NOT BE BUILT."

47 (d) To the extent not shown or projected on the plats,  
48 plans of the units must show or project:

49 (1) The location and dimensions of the vertical  
50 boundaries of each unit, and that unit's identifying number;

51 (2) Any horizontal unit boundaries, with reference to an  
52 established datum, and that unit's identifying number; and

53 (3) Any units in which the declarant has reserved the  
54 right to create additional units or common elements  
55 (section 2-110 (d)), identified appropriately.

56 (e) Unless the declaration provides otherwise, the  
57 horizontal boundaries of part of a unit located outside of a  
58 building have the same elevation as the horizontal  
59 boundaries of the inside part, and need not be depicted on  
60 the plats and plans.

61 (f) Upon exercising any development right, the  
62 declarant shall record either new plats and plans necessary  
63 to conform to the requirements of subsections (a), (b) and  
64 (d), or new certifications of plats and plans previously  
65 recorded if those plats and plans otherwise conform to the  
66 requirements of those subsections.

67 (g) Any certification of a plat or plan required by this  
68 section or section 2-101 (b) must be made by an independent  
69 surveyor, architect or engineer.

**§36B-2-110. Exercise of development rights.**

1 (a) To exercise any development right reserved under  
2 section 2-105(a) (8), the declarant shall prepare, execute  
3 and record an amendment to the declaration (section 2-117)  
4 and comply with section 2-109. The declarant is the unit  
5 owner of any units thereby created. The amendment to the  
6 declaration must assign an identifying number to each new  
7 unit created, and, except in the case of subdivision or  
8 conversion of units described in subsection (b), reallocate  
9 the allocated interests among all units. The amendment  
10 must describe any common elements and any limited  
11 common elements thereby created and, in the case of  
12 limited common elements, designate the unit to which each  
13 is allocated to the extent required by section 2-108.

14 (b) Development rights may be reserved within any real  
15 estate added to the condominium if the amendment adding  
16 that real estate includes all matters required by section  
17 2-105 or 2-106, as the case may be, and the plats and plans  
18 include all matters required by section 2-109. This  
19 provision does not extend the time limit on the exercise of  
20 development rights imposed by the declaration pursuant to  
21 section 2-105(a) (8).

22 (c) Whenever a declarant exercises a development right  
23 to subdivide or convert a unit previously created into  
24 additional units, common elements, or both:

25 (1) If the declarant converts the unit entirely to common  
26 elements, the amendment to the declaration must reallocate  
27 all the allocated interests of that unit among the other units  
28 as if that unit had been taken by eminent domain (section  
29 1-107).

30 (2) If the declarant subdivides the unit into two or more  
31 units, whether or not any part of the unit is converted into  
32 common elements, the amendment to the declaration must  
33 reallocate all the allocated interests of the unit among the  
34 units created by the subdivision in any reasonable manner  
35 prescribed by the declarant.

36 (d) If the declaration provides, pursuant to section  
37 2-105(a) (8), that all or a portion of the real estate is subject  
38 to the development right of withdrawal:

39 (1) If all the real estate is subject to withdrawal, and the  
40 declaration does not describe separate portions of real  
41 estate subject to that right, none of the real estate may be  
42 withdrawn after a unit has been conveyed to a purchaser;  
43 and

44 (2) If a portion or portions are subject to withdrawal, no  
45 portion may be withdrawn after a unit in that portion has  
46 been conveyed to a purchaser.

**§36B-2-111. Alterations of units.**

1 Subject to the provisions of the declaration and other  
2 provisions of law, a unit owner:

3 (1) May make any improvements or alterations to his  
4 unit that do not impair the structural integrity or  
5 mechanical systems or lessen the support of any portion of  
6 the condominium;

7 (2) May not change the appearance of the common  
8 elements, or the exterior appearance of a unit or any other  
9 portion of the condominium, without permission of the  
10 association;

11 (3) After acquiring an adjoining unit or an adjoining  
12 part of an adjoining unit, may remove or alter any  
13 intervening partition or create apertures therein, even if the  
14 partition in whole or in part is a common element, if those  
15 acts do not impair the structural integrity or mechanical  
16 systems or lessen the support of any portion of the  
17 condominium. Removal of partitions or creation of  
18 apertures under this subdivision is not an alteration of  
19 boundaries.

**§36B-2-112. Relocation of boundaries between adjoining units.**

1 (a) Subject to the provisions of the declaration and  
2 other provisions of law, the boundaries between adjoining  
3 units may be relocated by an amendment to the declaration  
4 upon application to the association by the owners of those

5 units. If the owners of the adjoining units have specified a  
6 reallocation between their units of their allocated interests,  
7 the application must state the proposed reallocations.  
8 Unless the executive board determines, within thirty days,  
9 that the reallocations are unreasonable, the association  
10 shall prepare an amendment that identifies the units  
11 involved, states the reallocations, is executed by those unit  
12 owners, contains words of conveyance between them, and,  
13 upon recordation, is indexed in the name of the grantor and  
14 the grantee.

15 (b) The association shall prepare and record plats or  
16 plans necessary to show the altered boundaries between  
17 adjoining units, and their dimensions and identifying  
18 numbers.

**§36B-2-113. Subdivision of units.**

1 (a) If the declaration expressly so permits, a unit may be  
2 subdivided into two or more units. Subject to the provisions  
3 of the declaration and other provisions of law, upon  
4 application of a unit owner to subdivide a unit, the  
5 association shall prepare, execute and record an  
6 amendment to the declaration, including the plats and  
7 plans, subdividing that unit.

8 (b) The amendment to the declaration must be executed  
9 by the owner of the unit to be subdivided, assign an  
10 identifying number to each unit created, and reallocate the  
11 allocated interests formerly allocated to the subdivided  
12 unit to the new units in any reasonable manner prescribed  
13 by the owner of the subdivided unit.

**§36B-2-114. Monuments as boundaries.**

1 The existing physical boundaries of a unit or the physical  
2 boundaries of a unit reconstructed in substantial  
3 accordance with the original plats and plans thereof  
4 become its boundaries rather than the metes and bounds  
5 expressed in the deed or plat or plan, regardless of settling  
6 or lateral movement of the building, or minor variance  
7 between boundaries shown on the plats or plans or in the  
8 deed and those of the building. This section does not relieve  
9 a unit owner of liability in case of his willful misconduct nor

- 10 relieve a declarant or any other person of liability for failure
- 11 to adhere to the plats and plans.

**§36B-2-115. Use for sales purposes.**

1 A declarant may maintain sales offices, management  
2 offices and models in units or on common elements in the  
3 condominium only if the declaration so provides and  
4 specifies the rights of a declarant with regard to the  
5 number, size, location and relocation thereof. Any sales  
6 office, management office or model not designated a unit  
7 by the declaration is a common element, and if a declarant  
8 ceases to be a unit owner, he ceases to have any rights with  
9 regard thereto unless it is removed promptly from the  
10 condominium in accordance with a right to remove reserved  
11 in the declaration. Subject to any limitations in the  
12 declaration, a declarant may maintain signs on the common  
13 elements advertising the condominium. The provisions of  
14 this section are subject to the provisions of other state law  
15 and to local ordinances.

**§36B-2-116. Easement rights.**

1 Subject to the provisions of the declaration, a declarant  
2 has an easement through the common elements as may be  
3 reasonably necessary for the purpose of discharging a  
4 declarant's obligations or exercising special declarant  
5 rights, whether arising under this chapter or reserved in the  
6 declaration.

**§36B-2-117. Amendment of declaration.**

1 (a) Except in cases of amendments that may be executed  
2 by a declarant under section 2-109(f) or 2-110, the  
3 association under section 1-107, 2-106(d), 2-108(c), 2-112(a)  
4 or 2-113; or certain unit owners under section 2-108(b),  
5 2-112(a), 2-113(b) or 2-118(b), and, except as limited by  
6 subsection (d), the declaration, including the plats and  
7 plans, may be amended only by vote or agreement of unit  
8 owners of units to which at least sixty-seven percent of the  
9 votes in the association are allocated, or any larger majority  
10 the declaration specifies. The declaration may specify a  
11 smaller number only if all of the units are restricted  
12 exclusively to nonresidential use.

13 (b) No action to challenge the validity of an amendment  
14 adopted by the association pursuant to this section may be  
15 brought more than one year after the amendment is  
16 recorded.

17 (c) Every amendment to the declaration must be  
18 recorded in every county in which any portion of the  
19 condominium is located, and is effective only upon  
20 recordation. An amendment shall be indexed in the  
21 grantee's index in the name of the condominium and the  
22 association and in the grantor's index in the name of the  
23 parties executing the amendment.

24 (d) Except to the extent expressly permitted or required  
25 by other provisions of this chapter, no amendment may  
26 create or increase special declarant rights, increase the  
27 number of units, change the boundaries of any unit, the  
28 allocated interests of a unit, or the uses to which any unit is  
29 restricted, in the absence of unanimous consent of the unit  
30 owners.

31 (e) Amendments to the declaration required by this  
32 chapter to be recorded by the association shall be prepared,  
33 executed, recorded and certified on behalf of the  
34 association by any officer of the association designated for  
35 that purpose or, in the absence of designation, by the  
36 president of the association.

**§36B-2-118. Termination of condominium.**

1 (a) Except in the case of a taking of all the units by  
2 eminent domain (section 1-107), a condominium may be  
3 terminated only by agreement of unit owners of units to  
4 which at least eighty percent of the votes in the association  
5 are allocated, or any larger percentage the declaration  
6 specifies. The declaration may specify a smaller percentage  
7 only if all of the units in the condominium are restricted  
8 exclusively to nonresidential use.

9 (b) An agreement to terminate must be evidenced by the  
10 execution of a termination agreement or ratifications  
11 thereof, in the same manner as a deed, by the requisite  
12 number of unit owners. The termination agreement must  
13 specify a date after which the agreement will be void unless  
14 it is recorded before that date. A termination agreement and

15 all ratifications thereof must be recorded in every county in  
16 which a portion of the condominium is situated, and is  
17 effective only upon recordation.

18 (c) In the case of a condominium containing only units  
19 having horizontal boundaries described in the declaration,  
20 a termination agreement may provide that all the common  
21 elements and units of the condominium shall be sold  
22 following termination. If pursuant to the agreement, any  
23 real estate in the condominium is to be sold following  
24 termination, the termination agreement must set forth the  
25 minimum terms of the sale.

26 (d) In the case of a condominium containing any units  
27 not having horizontal boundaries described in the  
28 declaration, a termination agreement may provide for sale  
29 of the common elements, but may not require that the units  
30 be sold following termination, unless the declaration as  
31 originally recorded provided otherwise or unless all the unit  
32 owners consent to the sale.

33 (e) The association, on behalf of the unit owners, may  
34 contract for the sale of real estate in the condominium, but  
35 the contract is not binding on the unit owners until  
36 approved pursuant to subsections (a) and (b). If any real  
37 estate in the condominium is to be sold following  
38 termination, title to that real estate, upon termination, vests  
39 in the association as trustee for the holders of all interest in  
40 the units. Thereafter, the association has all powers  
41 necessary and appropriate to effect the sale. Until the sale  
42 has been concluded and the proceeds thereof distributed,  
43 the association continues in existence with all powers it had  
44 before termination. Proceeds of the sale must be distributed  
45 to unit owners and lienholders as their interests may  
46 appear, in proportion to the respective interests of unit  
47 owners as provided in subsection (h). Unless otherwise  
48 specified in the termination agreement, as long as the  
49 association holds title to the real estate, each unit owner  
50 and his successors in interest have an exclusive right to  
51 occupancy of the portion of the real estate that formerly  
52 constituted his unit. During the period of that occupancy,  
53 each unit owner and his successors in interest remain liable  
54 for all assessments and other obligations imposed on unit  
55 owners by this chapter or the declaration.

56 (f) If the real estate constituting the condominium is not  
57 to be sold following termination, title to the common  
58 elements and, in a condominium containing only units  
59 having horizontal boundaries described in the declaration,  
60 title to all the real estate in the condominium, vests in the  
61 unit owners upon termination as tenants in common in  
62 proportion to their respective interests as provided in  
63 subsection (h), and liens on the units shift accordingly.  
64 While the tenancy in common exists, each unit owner and  
65 his successors in interest have an exclusive right to  
66 occupancy of the portion of the real estate that formerly  
67 constituted his unit.

68 (g) Following termination of the condominium, the  
69 proceeds of any sale of real estate, together with the assets  
70 of the association, are held by the association as trustee for  
71 unit owners and holders of liens on the units as their  
72 interests may appear. Following termination, creditors of  
73 the association holding liens on the units, which were  
74 docketed before termination, may enforce those liens in the  
75 same manner as any lienholder. All other creditors of the  
76 association are to be treated as if they had perfected liens on  
77 the units immediately before termination.

78 (h) The respective interests of unit owners referred to in  
79 subsections (e), (f) and (g) are as follows:

80 (1) Except as provided in subdivision (2), the respective  
81 interests of unit owners are the fair market values of their  
82 units, limited common elements and common element  
83 interests immediately before the termination, as  
84 determined by one or more independent appraisers selected  
85 by the association. The decision of the independent  
86 appraisers shall be distributed to the unit owners and  
87 becomes final unless disapproved within thirty days after  
88 distribution by unit owners of units to which twenty-five  
89 percent of the votes in the association are allocated. The  
90 proportion of any unit owner's interest to that of all unit  
91 owners is determined by dividing the fair market value of  
92 that unit owner's unit and common element interest by the  
93 total fair market values of all the units and common  
94 elements.



95 (2) If any unit or any limited common element is  
96 destroyed to the extent that an appraisal of the fair market  
97 value thereof before destruction cannot be made, the  
98 interests of all unit owners are their respective common  
99 element interests immediately before the termination.

100 (i) Except as provided in subsection (j), foreclosure or  
101 enforcement of a lien or encumbrance against the entire  
102 condominium does not of itself terminate the condominium,  
103 and foreclosure or enforcement of a lien, or encumbrance  
104 against a portion of the condominium, other than  
105 withdrawable real estate, does not withdraw that portion  
106 from the condominium. Foreclosure or enforcement of a  
107 lien or encumbrance against withdrawable real estate does  
108 not of itself withdraw that real estate from the  
109 condominium, but the person taking title thereto has the  
110 right to require from the association, upon request, an  
111 amendment excluding the real estate from the  
112 condominium.

113 (j) If a lien or encumbrance against a portion of the real  
114 estate comprising the condominium has priority over the  
115 declaration, and the lien or encumbrance has not been  
116 partially released, the parties foreclosing the lien or  
117 encumbrance may upon foreclosure, record an instrument  
118 excluding the real estate subject to that lien or  
119 encumbrance from the condominium.

**§36B-2-119. Rights of secured lenders.**

1 The declaration may require that all or a specified  
2 number or percentage of the mortgagees or beneficiaries of  
3 deeds of trust encumbering the units approve specified  
4 actions of the unit owners or the association as a condition  
5 to the effectiveness of those actions, but no requirement for  
6 approval may operate to (1) deny or delegate control over  
7 the general administrative affairs of the association by the  
8 unit owners or the executive board, or (2) prevent the  
9 association or the executive board from commencing,  
10 intervening in, or settling any litigation or proceeding, or  
11 receiving and distributing any insurance proceeds except  
12 pursuant to section 3-113.

**§36B-2-120. Master associations.**

1 (a) If the declaration for a condominium provides that  
2 any of the powers described in section 3-102 are to be  
3 exercised by or may be delegated to a profit or nonprofit  
4 corporation (or unincorporated association) which  
5 exercises those or other powers on behalf of one or more  
6 condominiums or for the benefit of the unit owners of one or  
7 more condominiums, all provisions of this chapter  
8 applicable to unit owners' associations apply to any such  
9 corporation (or unincorporated association), except as  
10 modified by this section.

11 (b) Unless a master association is acting in the capacity  
12 of an association described in section 3-101, it may exercise  
13 the powers set forth in section 3-102(a) (2) only to the extent  
14 expressly permitted in the declarations of condominiums  
15 which are part of the master association or expressly  
16 described in the delegations of power from those  
17 condominiums to the master association.

18 (c) If the declaration of any condominium provides that  
19 the executive board may delegate certain powers to a  
20 master association, the members of the executive board  
21 have no liability for the acts or omissions of the master  
22 association with respect to those powers following  
23 delegation.

24 (d) The rights and responsibilities of unit owners with  
25 respect to the unit owners' association set forth in sections  
26 3-103, 3-108, 3-109, 3-110 and 3-112 apply in the conduct of  
27 the affairs of a master association only to those persons who  
28 elect the board of a master association, whether or not those  
29 persons are otherwise unit owners within the meaning of  
30 this chapter.

31 (e) Notwithstanding the provisions of section 3-103(f)  
32 with respect to the election of the executive board of an  
33 association by all unit owners after the period of declarant  
34 control ends, and even if a master association is also an  
35 association described in section 3-101, the certificate of  
36 incorporation or other instrument creating the master  
37 association and the declaration of each condominium the  
38 powers of which are assigned by the declaration or

39 delegated to the master association may provide that the  
40 executive board of the master association must be elected  
41 after the period of declarant control in any of the following  
42 ways:

43 (1) All unit owners of all condominiums subject to the  
44 master association may elect all members of that executive  
45 board.

46 (2) All members of the executive boards of all  
47 condominiums subject to the master association may elect  
48 all members of that executive board.

49 (3) All unit owners of each condominium subject to the  
50 master association may elect specified members of that  
51 executive board.

52 (4) All members of the executive board of each  
53 condominium subject to the master association may elect  
54 specified members of that executive board.

**§36B-2-121. Merger or consolidation of condominiums.**

1 (a) Any two or more condominiums, by agreement of the  
2 unit owners as provided in subsection (b), may be merged or  
3 consolidated into a single condominium. In the event of a  
4 merger or consolidation, unless the agreement otherwise  
5 provides, the resultant condominium is, for all purposes,  
6 the legal successor of all of the preexisting condominiums  
7 and the operations and activities of all associations of the  
8 preexisting condominiums shall be merged or consolidated  
9 into a single association which shall hold all powers, rights,  
10 obligations, assets and liabilities of all preexisting  
11 associations.

12 (b) An agreement of two or more condominiums to  
13 merge or consolidate pursuant to subsection (a) must be  
14 evidenced by an agreement prepared, executed, recorded  
15 and certified by the president of the association of each of  
16 the preexisting condominiums following approval by  
17 owners of units to which are allocated the percentage of  
18 votes in each condominium required to terminate that  
19 condominium. Any such agreement must be recorded in  
20 every county in which a portion of the condominium is  
21 located and is not effective until recorded.

22 (c) Every merger or consolidation agreement must

23 provide for the reallocation of the allocated interests in the  
 24 new association among the units of the resultant  
 25 condominium either (i) by stating the reallocations or the  
 26 formulas upon which they are based or (ii) by stating the  
 27 percentage of overall allocated interests of the new  
 28 condominium which are allocated to all of the units  
 29 comprising each of the preexisting condominiums, and  
 30 providing that the portion of the percentages allocated to  
 31 each unit formerly comprising a part of the preexisting  
 32 condominium must be equal to the percentages of allocated  
 33 interests allocated to that unit by the declaration of the  
 34 preexisting condominium.

**ARTICLE 3. MANAGEMENT OF CONDOMINIUM.**

- §36B-3-101. Organization of unit owners' association.
- §36B-3-102. Powers of unit owners' association.
- §36B-3-103. Executive board members and officers.
- §36B-3-104. Transfer of special declarant rights.
- §36B-3-105. Termination of contracts and leases of declarant.
- §36B-3-106. Bylaws.
- §36B-3-107. Upkeep of condominium.
- §36B-3-108. Meetings.
- §36B-3-109. Quorums.
- §36B-3-110. Voting; proxies.
- §36B-3-111. Tort and contract liability.
- §36B-3-112. Conveyance or encumbrance of common elements.
- §36B-3-113. Insurance.
- §36B-3-114. Surplus funds.
- §36B-3-115. Assessments for common expenses.
- §36B-3-116. Lien for assessments.
- §36B-3-117. Other liens affecting the condominium.
- §36B-3-118. Association records.
- §36B-3-119. Association as trustee.

**§36B-3-101. Organization of unit owners' association.**

1 A unit owners' association must be organized no later  
 2 than the date the first unit in the condominium is conveyed.  
 3 The membership of the association at all times shall consist  
 4 exclusively of all the unit owners or, following termination  
 5 of the condominium, of all former unit owners entitled to  
 6 distributions of proceeds under section 2-118, or their heirs,  
 7 successors or assigns. The association shall be organized as  
 8 a profit or nonprofit corporation or as an unincorporated  
 9 association.

**§36B-3-102. Powers of unit owners' association.**

1 (a) Except as provided in subsection (b), and subject to

2 the provisions of the declaration, the association, even if  
3 unincorporated, may:

4 (1) Adopt and amend bylaws and rules and regulations;

5 (2) Adopt and amend budgets for revenues, ex-  
6 penditures and reserves and collect assessments for com-  
7 mon expenses from unit owners;

8 (3) Hire and discharge managing agents and other  
9 employees, agents and independent contractors;

10 (4) Institute, defend or intervene in litigation or  
11 administrative proceeding in its own name on behalf of  
12 itself or two or more unit owners on matters affecting the  
13 condominium;

14 (5) Make contracts and incur liabilities;

15 (6) Regulate the use, maintenance, repair, replacement  
16 and modification of common elements;

17 (7) Cause additional improvements to be made as a part  
18 of the common elements;

19 (8) Acquire, hold, encumber and convey in its own  
20 name any right, title or interest to real or personal  
21 property, but common elements may be conveyed or  
22 subjected to a security interest only pursuant to section  
23 3-112;

24 (9) Grant easements, leases, licenses and concessions  
25 through or over the common elements;

26 (10) Impose and receive any payments, fees or charges  
27 for the use, rental or operation of the common elements  
28 other than limited common elements described in sections  
29 2-102(2) and (4) and for services provided to unit owners;

30 (11) Impose charges for late payment of assessments  
31 and, after notice and an opportunity to be heard, levy  
32 reasonable fines for violations of the declaration, bylaws  
33 and rules and regulations of the association;

34 (12) Impose reasonable charges for the preparation and  
35 recordation of amendments to the declaration, resale  
36 certificates required by section 4-109, or statements of  
37 unpaid assessments;

38 (13) Provide for the indemnification of its officers and  
39 executive board and maintain directors' and officers'  
40 liability insurance;

41 (14) Assign its right to future income, including the  
42 right to receive common expense assessments, but only to  
43 the extent the declaration expressly so provides;

44 (15) Exercise any other powers conferred by the  
45 declaration or bylaws;

46 (16) Exercise all other powers that may be exercised in  
47 this state by legal entities of the same type as the  
48 association; and

49 (17) Exercise any other powers necessary and proper for  
50 the governance and operation of the association.

51 (b) The declaration may not impose limitations on the  
52 power of the association to deal with the declarant which  
53 are more restrictive than the limitations imposed on the  
54 power of the association to deal with other persons.

**§36B-3-103. Executive board members and officers.**

1 (a) Except as provided in the declaration, the bylaws, in  
2 subsection (b), or other provisions of this chapter, the  
3 executive board may act in all instances on behalf of the  
4 association. In the performance of their duties, the officers  
5 and members of the executive board are required to  
6 exercise (i) if appointed by the declarant, the care required  
7 of fiduciaries of the unit owners and (ii) if elected by the unit  
8 owners, ordinary and reasonable care.

9 (b) The executive board may not act on behalf of the  
10 association to amend the declaration (section 2-117), to  
11 terminate the condominium (section 2-118), or to elect  
12 members of the executive board or determine the  
13 qualifications, powers and duties, or terms of office of  
14 executive board members (section 3-103(f)), but the  
15 executive board may fill vacancies in its membership for the  
16 unexpired portion of any term.

17 (c) Within thirty days after adoption of any proposed  
18 budget for the condominium, the executive board shall  
19 provide a summary of the budget to all the unit owners and

20 shall set a date for a meeting of the unit owners to consider  
21 ratification of the budget not less than fourteen nor more  
22 than thirty days after mailing of the summary. Unless at  
23 that meeting a majority of all the unit owners or any larger  
24 vote specified in the declaration reject the budget, the  
25 budget is ratified, whether or not a quorum is present. In the  
26 event the proposed budget is rejected, the periodic budget  
27 last ratified by the unit owners shall be continued until such  
28 time as the unit owners ratify a subsequent budget  
29 proposed by the executive board.

30 (d) Subject to subsection (e), the declaration may  
31 provide for a period of declarant control of the association,  
32 during which period a declarant, or persons designated by  
33 him, may appoint and remove the officers and members of  
34 the executive board. Regardless of the period provided in  
35 the declaration, a period of declarant control terminates no  
36 later than the earlier of: (i) Sixty days after conveyance of  
37 seventy-five percent of the units which may be created to  
38 unit owners other than a declarant; (ii) two years after all  
39 declarants have ceased to offer units for sale in the ordinary  
40 course of business; or (iii) two years after any development  
41 right to add new units was last exercised. A declarant may  
42 voluntarily surrender the right to appoint and remove  
43 officers and members of the executive board before  
44 termination of that period, but in that event he may require,  
45 for the duration of the period of declarant control, that  
46 specified actions of the association or executive board, as  
47 described in a recorded instrument executed by the  
48 declarant, be approved by the declarant before they become  
49 effective.

50 (e) Not later than sixty days after conveyance of twenty-  
51 five percent of the units which may be created to unit  
52 owners other than a declarant, at least one member and not  
53 less than twenty-five percent of the members of the  
54 executive board must be elected by unit owners other than  
55 the declarant. Not later than sixty days after conveyance of  
56 fifty percent of the units which may be created to unit  
57 owners other than a declarant, not less than thirty-three  
58 and one-third percent of the members of the executive  
59 board must be elected by unit owners other than the  
60 declarant.

61 (f) Not later than the termination of any period of  
62 declarant control, the unit owners shall elect an executive  
63 board of at least three members, at least a majority of whom  
64 must be unit owners. The executive board shall elect the  
65 officers. The executive board members and officers shall  
66 take office upon election.

67 (g) Notwithstanding any provision of the declaration or  
68 bylaws to the contrary, the unit owners, by a two-thirds  
69 vote of all persons present and entitled to vote at any  
70 meeting of the unit owners at which a quorum is present,  
71 may remove any member of the executive board with or  
72 without cause, other than a member appointed by the  
73 declarant.

**§36B-3-104. Transfer of special declarant rights.**

1 (a) No special declarant rights (section 1-103(23))  
2 created or reserved under this chapter may be transferred  
3 except by an instrument evidencing the transfer recorded in  
4 every county in which any portion of the condominium is  
5 located. The instrument is not effective unless executed by  
6 the transferee.

7 (b) Upon transfer of any special declarant right, the  
8 liability of a transferor declarant is as follows:

9 (1) A transferor is not relieved of any obligation or  
10 liability arising before the transfer and remains liable for  
11 warranty obligations imposed upon him by this chapter.  
12 Lack of privity does not deprive any unit owner of standing  
13 to maintain an action to enforce any obligation of the  
14 transferor.

15 (2) If a successor to any special declarant right is an  
16 affiliate of a declarant (section 1-103(1)), the transferor is  
17 jointly and severally liable with the successor for any  
18 obligations and liabilities of the successor relating to the  
19 condominium.

20 (3) If a transferor retains any special declarant right,  
21 but transfers other special declarant rights to a successor  
22 who is not an affiliate of the declarant, the transferor is  
23 liable for any obligations or liabilities imposed on a  
24 declarant by this chapter or by the declaration relating to



25 the retained special declarant rights and arising after the  
26 transfer.

27 (4) A transferor has no liability for any act or omission  
28 or any breach of a contractual or warranty obligation  
29 arising from the exercise of a special declarant right by a  
30 successor declarant who is not an affiliate of the transferor.

31 (c) Unless otherwise provided in a mortgage instrument  
32 or deed of trust, in case of foreclosure of a mortgage, tax  
33 sale, judicial sale, sale by a trustee under a deed of trust, or  
34 sale under bankruptcy code or receivership proceedings, of  
35 any units owned by a declarant or real estate in a  
36 condominium subject to development rights, a person  
37 acquiring title to all the real estate being foreclosed or sold,  
38 but only upon his request, succeeds to all special declarant  
39 rights related to that real estate held by that declarant, or  
40 only to any rights reserved in the declaration pursuant to  
41 section 2-115 and held by that declarant to maintain  
42 models, sales offices and signs. The judgment or instrument  
43 conveying title shall provide for transfer of only the special  
44 declarant rights requested.

45 (d) Upon foreclosure, tax sale, judicial sale, sale by a  
46 trustee under a deed of trust, or sale under bankruptcy code  
47 or receivership proceedings, of all units and other real  
48 estate in a condominium owned by a declarant:

49 (1) The declarant ceases to have any special declarant  
50 rights, and

51 (2) The period of declarant control (section 3-103(d))  
52 terminates unless the judgment or instrument conveying  
53 title provides for transfer of all special declarant rights held  
54 by that declarant to a successor declarant.

55 (e) The liabilities and obligations of persons who  
56 succeed to special declarant rights are as follows:

57 (1) A successor to any special declarant right who is an  
58 affiliate of a declarant is subject to all obligations and  
59 liabilities imposed on the transferor by this chapter or by  
60 the declaration.

61 (2) A successor to any special declarant right, other than  
62 a successor described in subdivision (3) or (4), who is not an

63 affiliate of a declarant, is subject to all obligations and  
64 liabilities imposed by this chapter or the declaration:

65 (i) On a declarant which relate to his exercise or  
66 nonexercise of special declarant rights; or

67 (ii) On his transferor, other than:

68 (A) Misrepresentations by any previous declarant;

69 (B) Warranty obligations on improvements made by any  
70 previous declarant, or made before the condominium was  
71 created;

72 (C) Breach of any fiduciary obligation by any previous  
73 declarant or his appointees to the executive board; or

74 (D) Any liability or obligation imposed on the  
75 transferor as a result of the transferor's acts or omissions  
76 after the transfer.

77 (3) A successor to only a right reserved in the  
78 declaration to maintain models, sales offices and signs  
79 (section 2-115), if he is not an affiliate of a declarant, may  
80 not exercise any other special declarant right, and is not  
81 subject to any liability or obligation as a declarant, except  
82 the obligation to provide a public offering statement, and  
83 any liability arising as a result thereof.

84 (4) A successor to all special declarant rights held by his  
85 transferor who is not an affiliate of that declarant and who  
86 succeeded to those rights pursuant to a deed in lieu of  
87 foreclosure or a judgment or instrument conveying title to  
88 units under subsection (c), may declare his intention in a  
89 recorded instrument to hold those rights solely for transfer  
90 to another person. Thereafter, until transferring all special  
91 declarant rights to any person acquiring title to any unit  
92 owned by the successor, or until recording an instrument  
93 permitting exercise of all those rights, that successor may  
94 not exercise any of those rights other than any right held by  
95 his transferor to control the executive board in accordance  
96 with the provisions of section 3-103(d) for the duration of  
97 any period of declarant control, and any attempted exercise  
98 of those rights is void. So long as a successor declarant may  
99 not exercise special declarant rights under this subsection,  
100 he is not subject to any liability or obligation as a declarant

101 other than liability for his acts and omissions under section  
102 3-103(d).

103 (f) Nothing in this section subjects any successor to a  
104 special declarant right to any claims against or other  
105 obligations of a transferor declarant, other than claims and  
106 obligations arising under this chapter or the declaration.

**§36B-3-105. Termination of contracts and leases of declarant.**

1 If entered into before the executive board elected by the  
2 unit owners pursuant to section 3-103(f) takes office, (i) any  
3 management contract, employment contract, or lease of  
4 recreational or parking areas or facilities, (ii) any other  
5 contract or lease between the association and a declarant or  
6 an affiliate of a declarant, or (iii) any contract or lease that  
7 is not bona fide or was unconscionable to the unit owners at  
8 the time entered into under the circumstances then  
9 prevailing, may be terminated without penalty by the  
10 association at any time after the executive board elected by  
11 the unit owners pursuant to section 3-103(f) takes office  
12 upon not less than ninety days' notice to the other party.  
13 This subsection does not apply to any lease the termination  
14 of which would terminate the condominium or reduce its  
15 size, unless the real estate subject to that lease was included  
16 in the condominium for the purpose of avoiding the right of  
17 the association to terminate a lease under this section.

**§36B-3-106. Bylaws.**

- 1 (a) The bylaws of the association must provide for:
- 2 (1) The number of members of the executive board and  
3 the titles of the officers of the association;
- 4 (2) Election by the executive board of a president,  
5 treasurer, secretary, and any other officers of the  
6 association the bylaws specify;
- 7 (3) The qualifications, powers and duties, terms of  
8 office, and manner of electing and removing executive  
9 board members and officers and filling vacancies;
- 10 (4) Which, if any, of its powers the executive board or  
11 officers may delegate to other persons or to a managing  
12 agent;

13 (5) Which of its officers may prepare, execute, certify  
14 and record amendments to the declaration on behalf of the  
15 association; and

16 (6) The method of amending the bylaws.

17 (b) Subject to the provisions of the declaration, the  
18 bylaws may provide for any other matters the association  
19 deems necessary and appropriate.

**§36B-3-107. Upkeep of condominium.**

1 (a) Except to the extent provided by the declaration,  
2 subsection (b), or section 3-113(h), the association is  
3 responsible for maintenance, repair and replacement of the  
4 common elements, and each unit owner is responsible for  
5 maintenance, repair and replacement of his unit. Each unit  
6 owner shall afford to the association and the other unit  
7 owners, and to their agents or employees, access through his  
8 unit reasonably necessary for those purposes. If damage is  
9 inflicted on the common elements or any unit through  
10 which access is taken, the unit owner responsible for the  
11 damage, or the association if it is responsible, is liable for  
12 the prompt repair thereof.

13 (b) In addition to the liability that a declarant as a unit  
14 owner has under this chapter, the declarant alone is liable  
15 for all expenses in connection with real estate subject to  
16 development rights. No other unit owner and no other  
17 portion of the condominium is subject to a claim for  
18 payment of those expenses. Unless the declaration provides  
19 otherwise, any income or proceeds from real estate subject  
20 to development rights inures to the declarant.

**§36B-3-108. Meetings.**

1 A meeting of the association must be held at least once  
2 each year. Special meetings of the association may be called  
3 by the president or by twenty percent or any lower  
4 percentage specified in the bylaws of either the executive  
5 board or the unit owners. Not less than ten nor more than  
6 sixty days in advance of any meeting, the secretary or other  
7 officer specified in the bylaws shall cause notice to be  
8 hand-delivered or sent prepaid by United States mail to the  
9 mailing address of each unit or to any other mailing address

10 designated in writing by the unit owner. The notice of any  
11 meeting must state the time and place of the meeting and  
12 the items on the agenda, including the general nature of any  
13 proposed amendment to the declaration or bylaws, any  
14 budget changes and any proposal to remove a director or  
15 office.

**§36B-3-109. Quorums.**

1 (a) Unless the bylaws provide otherwise, a quorum is  
2 present throughout any meeting of the association if  
3 persons entitled to cast twenty percent of the votes which  
4 may be cast for election of the executive board are present  
5 in person or by proxy at the beginning of the meeting.

6 (b) Unless the bylaws specify a larger percentage, a  
7 quorum is deemed present throughout any meeting of the  
8 executive board if persons entitled to cast fifty percent of  
9 the votes on that board are present at the beginning of the  
10 meeting.

**§36B-3-110. Voting; proxies.**

1 (a) If only one of the multiple owners of a unit is present  
2 at a meeting of the association, he is entitled to cast all the  
3 votes allocated to that unit. If more than one of the multiple  
4 owners are present, the votes allocated to that unit may be  
5 cast only in accordance with the agreement of a majority in  
6 interest of the multiple owners, unless the declaration  
7 expressly provides otherwise. There is majority agreement  
8 if any one of the multiple owners casts the votes allocated to  
9 that unit without protest being made promptly to the  
10 person presiding over the meeting by any of the other  
11 owners of the unit.

12 (b) Votes allocated to a unit may be cast pursuant to a  
13 proxy duly executed by a unit owner. If a unit is owned by  
14 more than one person, each owner of the unit may vote or  
15 register protest to the casting of votes by the other owners of  
16 the unit through a duly executed proxy. A unit owner may  
17 not revoke a proxy given pursuant to this section except by  
18 actual notice of revocation to the person presiding over a  
19 meeting of the association. A proxy is void if it is not dated  
20 or purports to be revocable without notice. A proxy

21 terminates one year after its date, unless it specifies a  
22 shorter term.

23 (c) If the declaration requires that votes on specified  
24 matters affecting the condominium be cast by lessees rather  
25 than unit owners of leased units: (i) The provisions of  
26 subsections (a) and (b) apply to lessees as if they were unit  
27 owners; (ii) unit owners who have leased their units to other  
28 persons may not cast votes on those specified matters; and  
29 (iii) lessees are entitled to notice of meetings, access to  
30 records and other rights respecting those matters as if they  
31 were unit owners. Unit owners must also be given notice, in  
32 the manner provided in section 3-108, of all meetings at  
33 which lessees may be entitled to vote.

34 (d) No votes allocated to a unit owned by the association  
35 may be cast.

**§36B-3-111. Tort and contract liability.**

1 Neither the association nor any unit owner except the  
2 declarant is liable for that declarant's torts in connection  
3 with any part of the condominium which that declarant has  
4 the responsibility to maintain. Otherwise, an action  
5 alleging a wrong done by the association must be brought  
6 against the association and not against any unit owner. If  
7 the wrong occurred during any period of declarant control  
8 and the association gives the declarant reasonable notice of  
9 and an opportunity to defend against the action, the  
10 declarant who then controlled the association is liable to  
11 the association or to any unit owner: (i) For all tort losses  
12 not covered by insurance suffered by the association or that  
13 unit owner, and (ii) for all costs which the association would  
14 not have incurred but for a breach of contract or other  
15 wrongful act or omission. Whenever the declarant is liable  
16 to the association under this section, the declarant is also  
17 liable for all litigation expenses, including reasonable  
18 attorneys' fees, incurred by the association. Any statute of  
19 limitation affecting the association's right of action under  
20 this section is tolled until the period of declarant control  
21 terminates. A unit owner is not precluded from bringing an  
22 action contemplated by this subsection because he is a unit  
23 owner or a member or officer of the association. Liens

24 resulting from judgments against the association are  
25 governed by section 3-117.

**§36B-3-112. Conveyance or encumbrance of common elements.**

1 (a) Portions of the common elements may be conveyed  
2 or subjected to a security interest by the association if  
3 persons entitled to cast at least eighty percent of the votes in  
4 the association, including eighty percent of the votes  
5 allocated to units not owned by a declarant, or any larger  
6 percentage the declaration specifies, agree to that action;  
7 but all the owners of units to which any limited common  
8 element is allocated must agree in order to convey that  
9 limited common element or subject it to a security interest.  
10 The declaration may specify a smaller percentage only if all  
11 of the units are restricted exclusively to nonresidential uses.  
12 Proceeds of the sale are an asset of the association.

13 (b) An agreement to convey common elements or subject  
14 them to a security interest must be evidenced by the  
15 execution of an agreement, or ratifications thereof, in the  
16 same manner as a deed, by the requisite number of unit  
17 owners. The agreement must specify a date after which the  
18 agreement will be void unless recorded before that date.  
19 The agreement and all ratifications thereof must be  
20 recorded in every county in which a portion of the  
21 condominium is situated and is effective only upon  
22 recordation.

23 (c) The association, on behalf of the unit owners, may  
24 contract to convey common elements, or subject them to a  
25 security interest, but the contract is not enforceable against  
26 the association until approved pursuant to subsections (a)  
27 and (b). Thereafter, the association has all powers necessary  
28 and appropriate to effect the conveyance or encumbrance,  
29 including the power to execute deeds or other instruments.

30 (d) Any purported conveyance, encumbrance, judicial  
31 sale or other voluntary or involuntary transfer of common  
32 elements, unless made pursuant to this section or pursuant  
33 to section 3-117(b), is void.

34 (e) A conveyance or encumbrance of common elements

35 pursuant to this section does not deprive any unit of its  
36 rights of access and support.

37 (f) Unless the declaration otherwise provides, a  
38 conveyance or encumbrance of common elements pursuant  
39 to this section does not affect the priority or validity of  
40 preexisting encumbrances.

**§36B-3-113. Insurance.**

1 (a) Commencing not later than the time of the first  
2 conveyance of a unit to a person other than a declarant, the  
3 association shall maintain, to the extent reasonably  
4 available:

5 (1) Property insurance on the common elements  
6 insuring against all risks of direct physical loss commonly  
7 insured against or, in the case of a conversion building,  
8 against fire and extended coverage perils. The total amount  
9 of insurance after application of any deductibles shall be  
10 not less than eighty percent of the actual cash value of the  
11 insured property at the time the insurance is purchased and  
12 at each renewal date, exclusive of land, excavations,  
13 foundations, and other items normally excluded from  
14 property policies; and

15 (2) Liability insurance, including medical payments  
16 insurance, in an amount determined by the executive board  
17 but not less than any amount specified in the declaration,  
18 covering all occurrences commonly insured against for  
19 death, bodily injury and property damage arising out of or  
20 in connection with the use, ownership or maintenance of  
21 the common elements.

22 (b) In the case of a building containing units having  
23 horizontal boundaries described in the declaration, the  
24 insurance maintained under subdivision (1), subsection (a),  
25 to the extent reasonably available, shall include the units,  
26 but need not include improvements and betterments  
27 installed by unit owners.

28 (c) If the insurance described in subsections (a) and (b) is  
29 not reasonably available, the association promptly shall  
30 cause notice of that fact to be hand-delivered or sent  
31 prepaid by United States mail to all unit owners. The



32 declaration may require the association to carry any other  
33 insurance, and the association in any event may carry any  
34 other insurance it deems appropriate to protect the  
35 association or the unit owners.

36 (d) Insurance policies carried pursuant to subsection (a)  
37 must provide that:

38 (1) Each unit owner is an insured person under the  
39 policy with respect to liability arising out of his interest in  
40 the common elements or membership in the association;

41 (2) The insurer waives its right to subrogation under the  
42 policy against any unit owner or members of his household;

43 (3) No act or omission by any unit owner, unless acting  
44 within the scope of his authority on behalf of the  
45 association, will void the policy or be a condition to  
46 recovery under the policy; and

47 (4) If, at the time of a loss under the policy, there is other  
48 insurance in the name of a unit owner covering the same  
49 risk covered by the policy, the association's policy provides  
50 primary insurance.

51 (e) Any loss covered by the property policy under  
52 subdivision (1), subsection (a) and subsection (b) must be  
53 adjusted with the association, but the insurance proceeds for  
54 that loss are payable to any insurance trustee designated for  
55 that purpose, or otherwise to the association, and not to any  
56 mortgagee or beneficiary under a deed of trust. The  
57 insurance trustee or the association shall hold any insurance  
58 proceeds in trust for unit owners and lienholders as their  
59 interest may appear. Subject to the provisions of subsection  
60 (h), the proceeds must be disbursed first for the repair or  
61 restoration of the damaged property, and unit owners and  
62 lienholders are not entitled to receive payment of any  
63 portion of the proceeds unless there is a surplus of proceeds  
64 after the property has been completely repaired or restored,  
65 or the condominium is terminated.

66 (f) An insurance policy issued to the association does  
67 not prevent a unit owner from obtaining insurance for his  
68 own benefit.

69 (g) An insurer that has issued an insurance policy under  
70 this section shall issue certificates or memoranda of  
71 insurance to the association and, upon written request, to  
72 any unit owner, mortgagee or beneficiary under a deed of  
73 trust. The insurer issuing the policy may not cancel or refuse  
74 to renew it until thirty days after notice of the proposed  
75 cancellation or nonrenewal has been mailed to the  
76 association, each unit owner and each mortgagee or  
77 beneficiary under a deed of trust to whom certificates, a  
78 certificate or memorandum of insurance has been issued at  
79 their respective last known addresses.

80 (h) Any portion of the condominium for which  
81 insurance is required under this section which is damaged  
82 or destroyed shall be repaired or replaced promptly by the  
83 association unless (i) the condominium is terminated, (ii)  
84 repair or replacement would be illegal under any state or  
85 local health or safety statute or ordinance, or (iii) eighty  
86 percent of the unit owners, including every owner of a unit  
87 or assigned limited common element which will not be  
88 rebuilt, vote not to rebuild. The cost of repair or  
89 replacement in excess of insurance proceeds and reserves is  
90 a common expense. If the entire condominium is not  
91 repaired or replaced, (i) the insurance proceeds attributable  
92 to the damaged common elements must be used to restore  
93 the damaged area to a condition compatible with the  
94 remainder of the condominium, (ii) the insurance proceeds  
95 attributable to units and limited common elements which  
96 are not rebuilt must be distributed to the owners of those  
97 units and the owners of the units to which those limited  
98 common elements were allocated, or to lienholders, as their  
99 interests may appear, and (iii) the remainder of the proceeds  
100 must be distributed to all the unit owners or lienholders, as  
101 their interests may appear, in proportion to the common  
102 element interests of all the units. If the unit owners vote not  
103 to rebuild any unit, that unit's allocated interests are  
104 automatically reallocated upon the vote as if the unit had  
105 been condemned under section 1-107(a), and the  
106 association promptly shall prepare, execute and record an  
107 amendment to the declaration reflecting the reallocations.  
108 Notwithstanding the provisions of this subsection, section

109 2-118 governs the distribution of insurance proceeds if the  
110 condominium is terminated.

111 (i) The provisions of this section may be varied or  
112 waived in the case of a condominium all of whose units are  
113 restricted to nonresidential use.

**§36B-3-114. Surplus funds.**

1 Unless otherwise provided in the declaration, any surplus  
2 funds of the association remaining after payment of or  
3 provision for common expenses and any prepayment of  
4 reserves must be paid to the unit owners in proportion to  
5 their common expense liabilities or credited to them to  
6 reduce their future common expense assessments.

**§36B-3-115. Assessments for common expenses.**

1 (a) Until the association makes a common expense  
2 assessment, the declarant shall pay all common expenses.  
3 After any assessment has been made by the association,  
4 assessments must be made at least annually based on a  
5 budget adopted at least annually by the association.

6 (b) Except for assessments under subsections (c), (d) and  
7 (e), all common expenses must be assessed against all the  
8 units in accordance with the allocations set forth in the  
9 declaration pursuant to section 2-107(a). Any past due  
10 common expense assessment or installment thereof bears  
11 interest at the rate established by the association not  
12 exceeding eighteen percent per year.

13 (c) To the extent required by the declaration:

14 (1) Any common expense associated with the  
15 maintenance, repair or replacement of a limited common  
16 element must be assessed against the units to which that  
17 limited common element is assigned equally, or in any other  
18 proportion that the declaration provides;

19 (2) Any common expense benefiting fewer than all of  
20 the units must be assessed exclusively against the units  
21 benefited; and

22 (3) The costs of insurance must be assessed in  
23 proportion to risk and the costs of utilities must be assessed  
24 in proportion to usage.

25 (d) Assessments to pay a judgment against the  
26 association (section 3-117(a)) may be made only against the  
27 units in the condominium at the time the judgment was  
28 entered, in proportion to their common expense liabilities.

29 (e) If any common expense is caused by the misconduct  
30 of any unit owner, the association may assess that expense  
31 exclusively against his unit.

32 (f) If common expense liabilities are reallocated,  
33 common expense assessments and any installment thereof  
34 not yet due shall be recalculated in accordance with the  
35 reallocated common expense liabilities.

**§36B-3-116. Lien for assessments.**

1 (a) The association has a lien on a unit for any  
2 assessment levied against that unit or fines imposed against  
3 its unit owner from the time the assessment or fine becomes  
4 due. The association's lien may be foreclosed in like manner  
5 as a mortgage on real estate or a power of sale under a deed  
6 of trust. But the association shall give reasonable notice of  
7 its action to all lienholders of the unit whose interest would  
8 be affected. Unless the declaration otherwise provides, fees,  
9 charges, late charges, fines and interest charged pursuant  
10 to section 3-102(a) (10), (11) and (12) are enforceable as  
11 assessments under this section. If an assessment is payable  
12 in installments, the full amount of the assessment is a lien  
13 from the time the first installment thereof becomes due.

14 (b) A lien under this section is prior to all other liens and  
15 encumbrances on a unit except (i) liens and encumbrances  
16 recorded before the recordation of the declaration, (ii) a  
17 first mortgage or deed of trust on the unit recorded before  
18 the date on which the assessment sought to be enforced  
19 became delinquent, and (iii) liens for real estate taxes and  
20 other governmental assessments or charges against the  
21 unit. The lien is also prior to the mortgages and deeds of  
22 trust described in clause (ii) above to the extent of the  
23 common expense assessments based on the periodic budget  
24 adopted by the association pursuant to section 3-115(a)  
25 which would have become due in the absence of  
26 acceleration during the six months immediately preceding  
27 institution of an action to enforce the lien. This subsection

28 does not affect the priority of mechanics' or materialmen's  
29 liens, or the priority of liens for other assessments made by  
30 the association.

31 (c) Unless the declaration otherwise provides, if two or  
32 more associations have liens for assessments created at any  
33 time on the same real estate, those liens have equal priority.

34 (d) For the purpose of perfecting and preserving its lien,  
35 the association shall give notice to the unit owner in the  
36 manner set forth in section one, article two, chapter fifty-  
37 six of this code, or by registered or certified mail, return  
38 receipt requested, and in a form reasonably calculated to  
39 inform the owner of his liability for payment of the  
40 assessment. The lien shall be discharged as to subsequent  
41 purchasers for value without notice unless the association  
42 shall cause to be recorded a notice of the lien in the office of  
43 the clerk of the county commission of any county wherein  
44 any part of the condominium is located. The notice shall  
45 contain:

46 (1) A legally sufficient description of the unit;

47 (2) The name or names of the owners of the unit;

48 (3) The amount of unpaid assessments due together with  
49 the date when each fell due; and

50 (4) The date of recordation.

51 The clerk of the county commission in whose office the  
52 notice is recorded shall index the notice in the appropriate  
53 deed books and lien books in the name of the unit owners  
54 and of the association. The cost of recordation shall be  
55 assessed against any unit owner found to be delinquent in a  
56 subsequent proceeding to enforce the lien.

57 Upon payment of the assessment, the association shall  
58 execute a written release of the lien in the manner set forth  
59 in section one, article twelve, chapter thirty-eight of this  
60 code. This release shall be recorded, at the expense of the  
61 association, in the office of the clerk of the county  
62 commission wherein the notice of the lien was filed.

63 (e) A lien for unpaid assessments is extinguished unless  
64 proceedings to enforce the lien are instituted within three  
65 years after the full amount of the assessments becomes due.

66 (f) This section does not prohibit actions to recover sums  
67 for which subsection (a) creates a lien, or prohibit an  
68 association from taking a deed in lieu of foreclosure.

69 (g) A judgment or decree in any action brought under  
70 this section must include costs and reasonable attorney's  
71 fees for the prevailing party.

72 (h) The association upon written request shall furnish to  
73 a unit owner a recordable statement setting forth the  
74 amount of unpaid assessments against his unit. The  
75 statement must be furnished within ten business days after  
76 receipt of the request and is binding on the association, the  
77 executive board, and every unit owner.

**§36B-3-117. Other liens affecting the condominium.**

1 (a) Except as provided in subsection (b), a judgment for  
2 money against the association if recorded is not a lien on the  
3 common elements but is a lien in favor of the judgment  
4 lienholder against all of the units in the condominium at the  
5 time the judgment was entered. No other property of a unit  
6 owner is subject to the claims of creditors of the association.

7 (b) If the association has granted a security interest in  
8 the common elements to a creditor of the association  
9 pursuant to section 3-112, the holder of that security  
10 interest shall exercise its right against the common  
11 elements before its judgment lien on any unit may be  
12 enforced.

13 (c) Whether perfected before or after the creation of the  
14 condominium, if a lien other than a deed of trust or  
15 mortgage, including a judgment lien or lien attributable to  
16 work performed or materials supplied before creation of the  
17 condominium, becomes effective against two or more units,  
18 the unit owner of an affected unit may pay to the lienholder  
19 the amount of the lien attributable to his unit, and the  
20 lienholder, upon receipt of payment, promptly shall deliver  
21 a release of the lien covering that unit. The amount of the  
22 payment must be proportionate to the ratio which that unit  
23 owner's common expense liability bears to the common  
24 expense liabilities of all unit owners whose units are subject  
25 to the lien. After payment, the association may not assess or  
26 have a lien against that unit owner's unit for any portion of  
27 the common expenses incurred in connection with that lien.

28 (d) A judgment against the association must be recorded  
29 and indexed in the name of the condominium and the  
30 association in the office of the clerk of the county  
31 commission; and, when so indexed, is notice of the lien  
32 against the units.

**§36B-3-118. Association records.**

1 The association shall keep financial records sufficiently  
2 detailed to enable the association to comply with section  
3 4-109. All financial and other records shall be made  
4 reasonably available for examination by any unit owner  
5 and his authorized agents.

**§36B-3-119. Association as trustee.**

1 With respect to a third person dealing with the  
2 association in the association's capacity as a trustee, the  
3 existence of trust powers and their proper exercise by the  
4 association may be assumed without inquiry. A third  
5 person is not bound to inquire whether the association has  
6 power to act as trustee or is properly exercising trust  
7 powers and a third person, without actual knowledge that  
8 the association is exceeding or improperly exercising its  
9 powers, is fully protected in dealing with the association as  
10 if it possessed and properly exercised the powers it purports  
11 to exercise. A third person is not bound to assure the proper  
12 application of trust assets paid or delivered to the  
13 association in its capacity as trustee.

**ARTICLE 4. PROTECTION OF CONDOMINIUM PURCHASERS.**

- §36B-4-101. Applicability; waiver.
- §36B-4-102. Liability for public offering statement requirements.
- §36B-4-103. Public offering statement; general provisions.
- §36B-4-104. Same—Condominiums subject to development rights.
- §36B-4-105. Same—Time shares.
- §36B-4-106. Same—Condominiums containing conversion buildings.
- §36B-4-107. Condominium securities.
- §36B-4-108. Purchaser's right to cancel.
- §36B-4-109. Resales of units.
- §36B-4-110. Escrow of deposits.
- §36B-4-111. Release of liens.
- §36B-4-112. Conversion buildings.
- §36B-4-113. Warranty against structural defects.
- §36B-4-114. Statute of limitations for warranties.
- §36B-4-115. Effect of violations on rights of action; attorney's fees.

- §36B-4-116. Labeling of promotional material.  
§36B-4-117. Declarant's obligation to complete and restore.  
§36B-4-118. Substantial completion of units.

**§36B-4-101. Applicability; waiver.**

1 (a) This article applies to all units subject to this  
2 chapter, except as provided in subsection (b) or as modified  
3 or waived by agreement of purchasers of units in a  
4 condominium in which all units are restricted to  
5 nonresidential use.

6 (b) Neither a public offering statement nor a resale  
7 certificate need be prepared or delivered in the case of:

8 (1) A gratuitous disposition of a unit;

9 (2) A disposition pursuant to court order;

10 (3) A disposition by a government or governmental  
11 agency;

12 (4) A disposition by foreclosure or deed in lieu of  
13 foreclosure;

14 (5) A disposition to a person in the business of selling  
15 real estate who intends to offer those units to purchasers; or

16 (6) A disposition that may be canceled at any time and  
17 for any reason by the purchaser without penalty.

**§36B-4-102. Liability for public offering statement requirements.**

1 (a) Except as provided in subsection (b), a declarant,  
2 prior to the offering of any interest in a unit to the public,  
3 shall prepare a public offering statement conforming to the  
4 requirements of sections 4-103, 4-104, 4-105 and 4-106.

5 (b) A declarant may transfer responsibility for  
6 preparation of all or a part of the public offering statement  
7 to a successor declarant (section 3-104) or to a person in the  
8 business of selling real estate who intends to offer units in  
9 the condominium for his own account. In the event of any  
10 such transfer, the transferor shall provide the transferee  
11 with any information necessary to enable the transferee to  
12 fulfill the requirements of subsection (a).



13 (c) Any declarant or other person in the business of  
14 selling real estate who offers a unit for his own account to a  
15 purchaser shall deliver a public offering statement in the  
16 manner prescribed in subsection 4-108(a). The person who  
17 prepared all or a part of the public offering statement is  
18 liable under sections 4-108 and 4-115 for any false or  
19 misleading statement set forth therein or for any omission  
20 of material fact therefrom with respect to that portion of the  
21 public offering statement which he prepared. If a declarant  
22 did not prepare any part of a public offering statement that  
23 he delivers, he is not liable for any false or misleading  
24 statement set forth therein or for any omission of material  
25 fact therefrom unless he had actual knowledge of the  
26 statement or omission or, in the exercise of reasonable care,  
27 should have known of the statement or omission.

28 (d) If a unit is part of a condominium and is part of any  
29 other real estate regime in connection with the sale of which  
30 the delivery of a public offering statement is required under  
31 the laws of this state, a single public offering statement  
32 conforming to the requirements of sections 4-103, 4-104,  
33 4-105 and 4-106 as those requirements relate to all real  
34 estate regimes in which the unit is located, and to any other  
35 requirements imposed under the laws of this state, may be  
36 prepared and delivered in lieu of providing two or more  
37 public offering statements.

**§36B-4-103. Public offering statement; general provisions.**

1 (a) Except as provided in subsection (b), a public  
2 offering statement must contain or fully and accurately  
3 disclose:

4 (1) The name and principal address of the declarant and  
5 of the condominium;

6 (2) A general description of the condominium, including  
7 to the extent possible, the types, number, and declarant's  
8 schedule of commencement and completion of construction  
9 of buildings and amenities that declarant anticipates  
10 including in the condominium;

11 (3) The number of units in the condominium;

12 (4) Copies and a brief narrative description of the

13 significant features of the declaration (other than the plats  
14 and plans) and any other recorded covenants, conditions,  
15 restrictions and reservations affecting the condominium;  
16 the bylaws, and any rules or regulations of the association;  
17 copies of any contracts and leases to be signed by  
18 purchasers at closing, and a brief narrative description of  
19 any contracts or leases that will or may be subject to  
20 cancellation by the association under section 3-105;

21 (5) Any current balance sheet and a projected budget for  
22 the association, either within or as an exhibit to the public  
23 offering statement, for one year after the date of the first  
24 conveyance to a purchaser, and thereafter the current  
25 budget of the association, a statement of who prepared the  
26 budget, and a statement of the budget's assumptions  
27 concerning occupancy and inflation factors. The budget  
28 must include, without limitation:

29 (i) A statement of the amount, or a statement that there  
30 is no amount, included in the budget as a reserve for repairs  
31 and replacement;

32 (ii) A statement of any other reserves;

33 (iii) The projected common expense assessment by  
34 category of expenditures for the association; and

35 (iv) The projected monthly common expense assessment  
36 for each type of unit;

37 (6) Any services not reflected in the budget that the  
38 declarant provides, or expenses that he pays, and that he  
39 expects may become at any subsequent time a common  
40 expense of the association and the projected common  
41 expense assessment attributable to each of those services or  
42 expenses for the association and for each type of unit;

43 (7) Any initial or special fee due from the purchaser at  
44 closing, together with a description of the purpose and  
45 method of calculating the fee;

46 (8) A description of any liens, defects or encumbrances  
47 on or affecting the title to the condominium;

48 (9) A description of any financing offered or arranged  
49 by the declarant;

50 (10) The terms and significant limitations of any  
51 warranties provided by the declarant, including statutory  
52 warranties and limitations on the enforcement thereof or on  
53 damages;

54 (11) A statement that:

55 (i) Within fifteen days after receipt of a public offering  
56 statement, a purchaser, before conveyance, may cancel any  
57 contract for purchase of a unit from a declarant;

58 (ii) If a declarant fails to provide a public offering  
59 statement to a purchaser before conveying a unit, that  
60 purchaser may recover from the declarant ten percent of the  
61 sales price of the unit; and

62 (iii) If a purchaser receives the public offering  
63 statement more than fifteen days before signing a contract,  
64 he cannot cancel the contract;

65 (12) A statement of any unsatisfied judgments or  
66 pending suits against the association, and the status of any  
67 pending suits material to the condominium of which a  
68 declarant has actual knowledge;

69 (13) A statement that any deposit made in connection  
70 with the purchase of a unit will be held in an escrow account  
71 until closing and will be returned to the purchaser if the  
72 purchaser cancels the contract pursuant to section 4-108,  
73 together with the name and address of the escrow agent;

74 (14) Any restraints on alienation of any portion of the  
75 condominium;

76 (15) A description of the insurance coverage provided  
77 for the benefit of unit owners;

78 (16) Any current or expected fees or charges to be paid  
79 by unit owners for the use of the common elements and  
80 other facilities related to the condominium;

81 (17) The extent to which financial arrangements have  
82 been provided for completion of all improvements labeled  
83 "MUST BE BUILT" pursuant to section 4-117 (declarant's  
84 obligation to complete and restore);

85 (18) A brief narrative description of any zoning and  
86 other land use requirements affecting the condominium;  
87 and

88 (19) All unusual and material circumstances, features  
89 and characteristics of the condominium and the units.

90 (b) If a condominium composed of not more than twelve  
91 units is not subject to any development rights, and no power  
92 is reserved to a declarant to make the condominium part of  
93 a larger condominium, group of condominiums, or other  
94 real estate, a public offering statement may but need not  
95 include the information otherwise required by subdivisions  
96 (9), (10), (15), (16), (17), (18) and (19), subsection (a) and the  
97 narrative descriptions of documents required by subdivision  
98 (4), subsection (a).

99 (c) A declarant promptly shall amend the public  
100 offering statement to report any material change in the  
101 information required by this section.

**§36B-4-104. Same — Condominiums subject to development rights.**

1 If the declaration provides that a condominium is subject  
2 to any development rights, the public offering statement  
3 must disclose, in addition to the information required by  
4 section 4-103:

5 (1) The maximum number of units, and the maximum  
6 number of units per acre, that may be created;

7 (2) A statement of how many or what percentage of the  
8 units which may be created will be restricted exclusively to  
9 residential use, or a statement that no representations are  
10 made regarding use restrictions;

11 (3) If any of the units that may be built within real estate  
12 subject to development rights are not to be restricted  
13 exclusively to residential use, a statement, with respect to  
14 each portion of that real estate, of the maximum percentage  
15 of the real estate areas, and the maximum percentage of the  
16 floor areas of all units that may be created therein, that are  
17 not restricted exclusively to residential use;

18 (4) A brief narrative description of any development  
19 rights reserved by a declarant and of any conditions  
20 relating to or limitations upon the exercise of development  
21 rights;

22 (5) A statement of the maximum extent to which each

23 unit's allocated interests may be changed by the exercise of  
24 any development right described in subdivision (3);

25 (6) A statement of the extent to which any buildings or  
26 other improvements that may be erected pursuant to any  
27 development right in any part of the condominium will be  
28 compatible with existing buildings and improvements in  
29 the condominium in terms of architectural style, quality of  
30 construction, and size, or a statement that no assurances are  
31 made in those regards;

32 (7) General descriptions of all other improvements that  
33 may be made and limited common elements that may be  
34 created within any part of the condominium pursuant to  
35 any development right reserved by the declarant, or a  
36 statement that no assurances are made in that regard;

37 (8) A statement of any limitations as to the locations of  
38 any building or other improvement that may be made  
39 within any part of the condominium pursuant to any  
40 development right reserved by the declarant, or a statement  
41 that no assurances are made in that regard;

42 (9) A statement that any limited common elements  
43 created pursuant to any development right reserved by the  
44 declarant will be of the same general types and sizes as the  
45 limited common elements within other parts of the  
46 condominium, or a statement of the types and sizes planned,  
47 or a statement that no assurances are made in that regard;

48 (10) A statement that the proportion of limited common  
49 elements to units created pursuant to any development  
50 right reserved by the declarant will be approximately equal  
51 to the proportion existing within other parts of the  
52 condominium, or a statement of any other assurances in  
53 that regard, or a statement that no assurances are made in  
54 that regard;

55 (11) A statement that all restrictions in the declaration  
56 affecting use, occupancy and alienation of units will apply  
57 to any units created pursuant to any development right  
58 reserved by the declarant, or a statement of any  
59 differentiations that may be made as to those units, or a  
60 statement that no assurances are made in that regard; and

61 (12) A statement of the extent to which any assurances  
62 made pursuant to this section apply or do not apply in the  
63 event that any development right is not exercised by the  
64 declarant.

**§36B-4-105. Same — Time shares.**

1 If the declaration provides that ownership or occupancy  
2 of any units is or may be in time shares, the public offering  
3 statement shall disclose in addition to the information  
4 required by section 4-103:

5 (1) The number and identity of units in which time  
6 shares may be created;

7 (2) The total number of time shares that may be created;

8 (3) The minimum duration of any time shares that may  
9 be created; and

10 (4) The extent to which the creation of time shares will  
11 or may affect the enforceability of the association's lien for  
12 assessments provided in section 3-116.

**§36B-4-106. Same — Condominiums containing conversion buildings.**

1 (a) The public offering statement of a condominium  
2 containing any conversion building must contain, in  
3 addition to the information required by section 4-102:

4 (1) A statement by the declarant, based on a report  
5 prepared by an independent architect or engineer,  
6 describing the present condition of all structural  
7 components and mechanical and electrical installations  
8 material to the use and enjoyment of the building;

9 (2) A statement by the declarant of the expected useful  
10 life of each item reported on in subdivision (1), or a state-  
11 ment that no representations are made in that regard; and

12 (3) A list of any outstanding notices of uncured  
13 violations of building code or other municipal regulations,  
14 together with the estimated cost of curing those violations.

15 (b) This section applies only to buildings containing  
16 units that may be occupied for residential use.

**§36B-4-107. Same — Condominium securities.**

1 If an interest in a condominium is currently registered  
2 with the Securities and Exchange Commission of the  
3 United States, a declarant satisfies all requirements  
4 relating to the preparation of a public offering statement of  
5 this chapter if he delivers to the purchaser a copy of the  
6 public offering statement filed with the Securities and  
7 Exchange Commission.

**§36B-4-108. Purchaser's right to cancel.**

1 (a) A person required to deliver a public offering  
2 statement pursuant to section 4-102(c) shall provide a  
3 purchaser of a unit with a copy of the public offering  
4 statement and all amendments thereto before conveyance  
5 of that unit, and not later than the date of any contract of  
6 sale. Unless a purchaser is given the public offering  
7 statement more than fifteen days before execution of a  
8 contract for the purchase of a unit, the purchaser, before  
9 conveyance, may cancel the contract within fifteen days  
10 after first receiving the public offering statement.

11 (b) If a purchaser elects to cancel a contract pursuant to  
12 subsection (a), he may do so by hand-delivering notice  
13 thereof to the offeror or by mailing notice thereof by  
14 prepaid United States mail to the offeror or to his agent for  
15 service of process. Cancellation is without penalty, and all  
16 payments made by the purchaser before cancellation shall  
17 be refunded promptly.

18 (c) If a person required to deliver a public offering  
19 statement pursuant to section 4-102(c) fails to provide a  
20 purchaser to whom a unit is conveyed with that public  
21 offering statement and all amendments thereto as required  
22 by subsection (a), the purchaser, in addition to any rights to  
23 damages or other relief, is entitled to receive from that  
24 person an amount equal to ten percent of the sales price of  
25 the unit.

**§36B-4-109. Resales of units.**

1 (a) Except in the case of a sale where delivery of a public  
2 offering statement is required, or unless exempt under

3 section 4-101(b), a unit owner shall furnish to a purchaser  
4 before execution of any contract for sale of a unit, or  
5 otherwise before conveyance, a copy of the declaration  
6 (other than the plats and plans), the bylaws, the rules or  
7 regulations of the association, and a certificate containing:

8 (1) A statement disclosing the effect on the proposed  
9 disposition of any right of first refusal or other restraint on  
10 the free alienability of the unit;

11 (2) A statement setting forth the amount of the monthly  
12 common expense assessment and any unpaid common  
13 expense or special assessment currently due and payable  
14 from the selling unit owner;

15 (3) A statement of any other fees payable by unit  
16 owners;

17 (4) A statement of any capital expenditures anticipated  
18 by the association for the current and two next succeeding  
19 fiscal years;

20 (5) A statement of the amount of any reserves for capital  
21 expenditures and of any portions of those reserves  
22 designated by the association for any specified projects;

23 (6) The most recent regularly prepared balance sheet  
24 and income and expense statement, if any, of the  
25 association;

26 (7) The current operating budget of the association;

27 (8) A statement of any unsatisfied judgments against  
28 the association and the status of any pending suits in which  
29 the association is a defendant;

30 (9) A statement describing any insurance coverage  
31 provided for the benefit of unit owners;

32 (10) A statement as to whether the executive board has  
33 knowledge that any alterations or improvements to the unit  
34 or to the limited common elements assigned thereto violate  
35 any provision of the declaration;

36 (11) A statement as to whether the executive board has  
37 knowledge of any violations of the health or building codes  
38 with respect to the unit, the limited common elements



39 assigned thereto, or any other portion of the condominium;  
40 and

41 (12) A statement of the remaining term of any leasehold  
42 estate affecting the condominium and the provisions  
43 governing any extension or renewal thereof.

44 (b) The association, within ten days after a request by a  
45 unit owner, shall furnish a certificate containing the  
46 information necessary to enable the unit owner to comply  
47 with this section. A unit owner providing a certificate  
48 pursuant to subsection (a) is not liable to the purchaser for  
49 any erroneous information provided by the association and  
50 included in the certificate.

51 (c) A purchaser is not liable for any unpaid assessment  
52 or fee greater than the amount set forth in the certificate  
53 prepared by the association. A unit owner is not liable to a  
54 purchaser for the failure or delay of the association to  
55 provide the certificate in a timely manner, but the purchase  
56 contract is voidable by the purchaser until the certificate  
57 has been provided and for five days thereafter or until  
58 conveyance, whichever first occurs.

**§36B-4-110. Escrow of deposits.**

1 Any deposit made in connection with the purchase or  
2 reservation of a unit from a person required to deliver a  
3 public offering statement pursuant to section 4-102(c) shall  
4 be placed in escrow and held either in this state or in the  
5 state where the unit is located in an account designated  
6 solely for that purpose by an institution whose accounts are  
7 insured by a governmental agency or instrumentality until:  
8 (1) Delivered to the declarant at closing; (2) delivered to the  
9 declarant because of purchaser's default under a contract to  
10 purchase the unit; or (3) refunded to the purchaser.

**§36B-4-111. Release of liens.**

1 (a) In the case of a sale of a unit where delivery of a  
2 public offering statement is required pursuant to section  
3 4-102(c), a seller shall, before conveying a unit, record or  
4 furnish to the purchaser, releases of all liens affecting that  
5 unit and its common element interest which the purchaser  
6 does not expressly agree to take subject to or assume. This

7 subsection does not apply to any real estate which a  
8 declarant has the right to withdraw.

9 (b) Before conveying real estate to the association, the  
10 declarant shall have that real estate released from: (1) All  
11 liens the foreclosure of which would deprive unit owners of  
12 any right of access to or easement of support of their units,  
13 and (2) all other liens on that real estate unless the public  
14 offering statement describes certain real estate which may  
15 be conveyed subject to liens in specified amounts.

**§36B-4-112. Conversion buildings.**

1 (a) A declarant of a condominium containing  
2 conversion buildings and any person in the business of  
3 selling real estate for his own account who intends to offer  
4 units in such a condominium shall give each of the  
5 residential tenants and any residential subtenant in  
6 possession of a portion of a conversion building notice of the  
7 conversion and provide those persons with the public  
8 offering statement no later than one hundred twenty days  
9 before the tenants and any subtenant in possession are  
10 required to vacate. The notice must set forth generally the  
11 rights of tenants and subtenants under this section and  
12 shall be hand-delivered to the unit or mailed by prepaid  
13 United States mail to the tenant and subtenant at the  
14 address of the unit or any other mailing address provided by  
15 a tenant. No tenant or subtenant may be required to vacate  
16 upon less than one hundred twenty days' notice, except by  
17 reason of nonpayment of rent, waste, or conduct that  
18 disturbs other tenants' peaceful enjoyment of the premises,  
19 and the terms of the tenancy may not be altered during that  
20 period. Failure to give notice as required by this section is a  
21 defense to an action for possession.

22 (b) For sixty days after delivery or mailing of the notice  
23 described in subsection (a), the person required to give the  
24 notice shall offer to convey each unit or proposed unit  
25 occupied for residential use to the tenant who leases that  
26 unit. If a tenant fails to purchase the unit during that sixty-  
27 day period, the offeror may not offer to dispose of an  
28 interest in that unit during the following one hundred  
29 eighty days at a price or on terms more favorable to the

30 offeree than the price or terms offered to the tenant. This  
31 subsection does not apply to any unit in a conversion  
32 building if that unit will be restricted exclusively to  
33 nonresidential use or the boundaries of the converted unit  
34 do not substantially conform to the dimensions of the  
35 residential unit before conversion.

36 (c) If a seller, in violation of subsection (b), conveys a  
37 unit to a purchaser for value who has no knowledge of the  
38 violation, recordation of the deed conveying the unit  
39 extinguishes any right a tenant may have under subsection  
40 (b) to purchase that unit if the deed states that the seller has  
41 complied with subsection (b), but does not affect the right of  
42 a tenant to recover damages from the seller for a violation of  
43 subsection (b).

44 (d) If a notice of conversion specifies a date by which a  
45 unit or proposed unit must be vacated and otherwise  
46 complies with the provisions of section five, article six,  
47 chapter thirty-seven of this code, the notice also constitutes  
48 a notice to vacate specified by that section.

49 (e) Nothing in this section permits termination of a lease  
50 by a declarant in violation of its terms.

**§36B-4-113. Warranty against structural defects.**

1 (a) *Definition.*—As used in this section “structural  
2 defects” means those defects in components constituting  
3 any unit or common element which reduce the stability or  
4 safety of the structure below accepted standards or restrict  
5 the normal intended use of all or part of the structure and  
6 which require repair, renovation, restoration or  
7 replacement. Nothing in this section shall be construed to  
8 make the declarant responsible for any items of  
9 maintenance relating to the units or common elements.

10 (b) *General rule.*—A declarant warrants against  
11 structural defects in each of the units for two years from the  
12 date each is conveyed to a bona fide purchaser, and all of the  
13 common elements for two years. The two years shall begin  
14 as to each of the common elements whenever the common  
15 element has been completed or, if later:

16 (1) As to any common element within any additional

17 real estate or portion thereof, at the time the first unit  
18 therein is conveyed to a bona fide purchaser;

19 (2) As to any common element within any convertible  
20 real estate or portion thereof, at the time the first unit  
21 therein is conveyed to a bona fide purchaser; and

22 (3) As to any common element within any other portion  
23 of the condominium, at the time the first unit therein is  
24 conveyed to a bona fide purchaser.

25 (c) *Limitation for conversion condominiums.*—The  
26 declarant of a conversion condominium may offer the units,  
27 common elements, or both, in “as is” condition in which  
28 event the declarant’s warranty against structural defects  
29 applies only to defects in components installed by declarant  
30 or work done by declarant except to the extent that the  
31 declarant gives a more extensive warranty in writing.

32 (d) *Exclusion or modification of warranty.*—Except  
33 with respect to a purchaser of a unit for residential use, the  
34 warranty against structural defects:

35 (1) May be excluded or modified by agreement of the  
36 parties; and

37 (2) Is excluded by expression of disclaimer, such as “as  
38 is,” “with all faults” or other language which in common  
39 understanding calls the buyer’s attention to the exclusion of  
40 warranties.

**§36B-4-114. Statute of limitations for warranties.**

1 (a) A judicial proceeding for breach of any obligation  
2 arising under this chapter must be commenced within six  
3 years after the cause of action accrues.

4 (b) Subject to subsection (c), a cause of action for breach  
5 of any express or statutory warranty, regardless of the  
6 purchaser’s lack of knowledge of the breach, accrues:

7 (1) As to a unit, at the time the purchaser to whom the  
8 warranty is first made enters into possession if a possessory  
9 interest was conveyed or at the time of acceptance of the  
10 instrument of conveyance if a nonpossessory interest was  
11 conveyed; and

12 (2) As to each common element, at the time the common  
13 element is completed or, if later, (i) as to a common element  
14 that may be added to the condominium or portion thereof,  
15 at the time the first unit therein is conveyed to a bona fide  
16 purchaser, or (ii) as to a common element within any other  
17 portion of the condominium, at the time the first unit in the  
18 condominium is conveyed to a bona fide purchaser.

19 (c) If any express or statutory warranty explicitly  
20 extends to future performance or duration of any  
21 improvement or component of the condominium, the cause  
22 of action accrues at the time the breach is discovered or at  
23 the end of the period for which the warranty explicitly  
24 extends, whichever is earlier.

**§36B-4-115. Effect of violations on rights of action; attorney's fees.**

1 If a declarant or any other person subject to this chapter  
2 fails to comply with any provision thereof or any provision  
3 of the declaration or bylaws, any person or class of persons  
4 adversely affected by the failure to comply has a claim for  
5 appropriate relief. Punitive damages may be awarded for a  
6 willful failure to comply with this chapter. The court, in an  
7 appropriate case, may award reasonable attorney's fees.

**§36B-4-116. Labeling of promotional material.**

1 If any improvement contemplated in a condominium is  
2 labeled "NEED NOT BE BUILT" on a plat or plan, or is to  
3 be located within a portion of the condominium with  
4 respect to which the declarant has reserved a development  
5 right, no promotional material may be displayed or  
6 delivered to prospective purchasers which describes or  
7 portrays that improvement unless the description or  
8 portrayal of the improvement is conspicuously labeled or  
9 identified as "NEED NOT BE BUILT."

**§36B-4-117. Declarant's obligation to complete and restore.**

1 (a) The declarant shall complete all improvements  
2 labeled "MUST BE BUILT" on plats or plans prepared  
3 pursuant to section 2-109.

4 (b) The declarant is subject to liability for the prompt  
5 repair and restoration, to a condition compatible with the

6 remainder of the condominium, of any portion of the  
 7 condominium affected by the exercise of rights reserved  
 8 pursuant to or created by sections 2-110, 2-111, 2-112,  
 9 2-113, 2-115 and 2-116.

**§36B-4-118. Substantial completion of units.**

1 In the case of a sale of a unit where delivery of a public  
 2 offering statement is required, a contract of sale may be  
 3 executed, but no interest in that unit may be conveyed until  
 4 the declaration is recorded and the unit is substantially  
 5 completed, as evidenced by a recorded certificate of  
 6 substantial completion executed by an independent  
 7 registered architect, surveyor or engineer, or by issuance of  
 8 a certificate of occupancy authorized by law.

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## CHAPTER 39

(S. B. 188—By Senator Williams)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter twenty 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 the certification and appointment of federal law-enforcement officers as special conservation officers; powers and duties of special conservation officers; written agreement between the director of the department of natural resources and a federal agency regarding the appointment of federal employees as special conservation officers; terms, conditions and limitations of the exercise of powers and duties by special conservation officers; qualifications for certification and appointment; and compensation of special conservation officers by the state or its political subdivisions not permitted.

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

That article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended

by adding thereto a new section, designated section one-b, to read as follows:

**ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES;  
MOTORBOATING.**

**§20-7-1b. Designation of certain federal law-enforcement officers as special conservation officers.**

1 The Legislature finds that it is in the mutual interest of  
2 the department and certain land management agencies of  
3 the United States to cooperate in the enforcement of state  
4 statutes and regulations within and adjacent to units of the  
5 National Park System, National Forests and U. S. Army  
6 Corps of Engineers projects located within the state of  
7 West Virginia.

8 Accordingly, the director of the department of natural  
9 resources may enter into a written agreement with a federal  
10 agency providing for the appointment of employees of the  
11 federal agency as special conservation officers and setting  
12 forth the terms and conditions within which such federal  
13 employees may exercise the powers and duties of special  
14 conservation officers. The terms and conditions in the  
15 agreement shall grant a special conservation officer  
16 appointed pursuant to the agreement the same powers and  
17 duties as prescribed for a full-time salaried conservation  
18 officer of the department, but shall limit a special  
19 conservation officer in the exercise of his or her powers and  
20 duties to areas within the boundaries of the federal units to  
21 which such officer is assigned in his or her federal  
22 employment and to situations outside the boundaries of  
23 such federal units where such exercise is for the mutual aid  
24 of conservation officers as set forth in the agreement.

25 Any federal employee whose duties involve the  
26 enforcement of the criminal laws of the United States and  
27 who possesses a valid law-enforcement certification issued  
28 by a federal land management agency which certifies the  
29 meeting of requirements at least equivalent to the law-  
30 enforcement officer training requirements promulgated  
31 pursuant to article twenty-nine, chapter thirty of this code,  
32 may be certified under the provisions of said article twenty-  
33 nine and appointed as a special conservation officer under

34 the provisions of this section. Any special conservation  
35 officer so appointed may not receive compensation or  
36 benefits from the state or any political subdivisions thereof  
37 for the performance of his or her duties as a special  
38 conservation officer.

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## CHAPTER 40

(Com. Sub. for H. B. 1183—By Delegate Kelly and Delegate Givens)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-a, relating to new motor vehicle warranties; setting forth legislative declarations; defining words, terms and phrases; establishing manufacturer's duty to repair or replace new motor vehicles; providing for a cause of action by a consumer; setting forth defenses; limitation of action; establishing presumptions; when warranty term deemed extended; requiring that a written statement be furnished to a consumer; setting forth information to be included in such statement; providing for the resale of a returned motor vehicle; requiring that a consumer who purchases a returned motor vehicle be provided a written statement; providing for the contents of such statement; prohibiting the manufacturer from requiring a dealer to accept such vehicle for resale; providing for a third party dispute resolution process; requiring the attorney general to promulgate rules and regulations; setting forth minimum requirements of third party dispute mechanisms; utilization of such mechanisms; extension of limitation of actions; and availability of other remedies.

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

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



**ARTICLE 6A. CONSUMER PROTECTION—NEW MOTOR VEHICLE WARRANTIES.**

- §46A-6A-1. Legislative declarations.
- §46A-6A-2. Definitions.
- §46A-6A-3. Manufacturer's duty to repair or replace new motor vehicles.
- §46A-6A-4. Civil action by consumer.
- §46A-6A-5. Presumption of reasonable number of attempts; extension of warranty term when repair services unavailable.
- §46A-6A-6. Written statement to be provided to consumer.
- §46A-6A-7. Resale of returned motor vehicle.
- §46A-6A-8. Third party dispute resolution process; attorney general to promulgate rules and regulations.
- §46A-6A-9. Other remedies available.

**§46A-6A-1. Legislative declarations.**

1 (1) The Legislature hereby finds and declares as a matter  
2 of public policy that the purpose of this article is to place  
3 upon the manufacturers of motor vehicles the duty to meet  
4 their obligations and responsibilities under the terms of the  
5 express warranties extended to the consumers in this state.  
6 The Legislature further finds as a matter of public policy that  
7 the manufacturer shall bear the total cost of performing any  
8 duty or responsibility imposed by their warranties and the  
9 provisions of this article.

10 (2) The Legislature further finds that any agreement under  
11 the provisions of article six-a, chapter seventeen-a of this  
12 code, or any agreement hereinafter amended or entered into  
13 between a dealer and manufacturer which would transfer to  
14 the dealer any duty, or all or any part of the cost of perform-  
15 ing any duty imposed on the manufacturer by the provisions  
16 of this article, or which would directly or indirectly charge  
17 the dealer for or reduce the payment or reimbursement due  
18 the dealer for performing work or furnishing parts required  
19 by this article to be provided by either the dealer or manu-  
20 facturer, so as to shift to the dealer all or any part of the cost  
21 of the manufacturer's compliance with this article, to be  
22 against public policy, void and unenforceable.

**§46A-6A-2. Definitions.**

1 When used in this article, the following words, terms and

2 phrases shall have the meaning ascribed to them, except  
3 where the context indicates a different meaning:

4 (1) "Consumer" means the purchaser, other than for pur-  
5 poses of resale, of a new motor vehicle purchased in this  
6 state, used primarily for personal, family or household pur-  
7 poses, a person to whom the new motor vehicle is transferred  
8 for the same purposes during the duration of an express war-  
9 ranty applicable to the motor vehicle and any other person  
10 entitled by the terms of the warranty to enforce the obligations  
11 of the warranty;

12 (2) "Manufacturer" means a person engaged in the busi-  
13 ness of manufacturing, assembling or distributing motor ve-  
14 hicles, who will, under normal business conditions during the  
15 year, manufacture, assemble or distribute to dealers at least  
16 ten new motor vehicles;

17 (3) "Manufacturer's express warranty" and "warranty"  
18 mean the written warranty of the manufacturer of a new motor  
19 vehicle of its condition and fitness for use, including any terms  
20 or conditions precedent to the enforcement of obligations  
21 under that warranty; and

22 (4) "Motor vehicle" means any passenger automobile sold  
23 in this state, including pickup trucks and vans subject to regis-  
24 tration as a Class A motor vehicle under the provisions of  
25 article ten, chapter seventeen-a of this code, and any self-  
26 propelled motor vehicle chassis of motor homes sold in this  
27 state subject to registration as a Class A or Class B motor ve-  
28 hicle under the provisions of article ten, chapter seventeen-a  
29 of this code.

**§46A-6A-3. Manufacturer's duty to repair or replace new motor vehicles.**

1 (a) If a new motor vehicle purchased in this state on or after  
2 the first day of January, one thousand nine hundred eighty-four,  
3 does not conform to all applicable express warranties and the  
4 consumer reports the nonconformity to the manufacturer, its  
5 agent or its authorized dealer during the term of the express  
6 warranties or during the period of one year following the date  
7 of original delivery of the new motor vehicle to a consumer,

8 whichever is the later date, the manufacturer, its agent or its au-  
9 thorized dealer shall make the repairs necessary to conform the  
10 vehicle to the express warranties, notwithstanding the fact that  
11 the repairs are made after the expiration of the warranty term.

12 (b) If the manufacturer, its agents or its authorized dealer  
13 are unable to conform the new motor vehicle to any applic-  
14 able express warranty by repairing or correcting any defect  
15 or condition which substantially impairs the use or market  
16 value of the motor vehicle to the consumer after a reasonable  
17 number of attempts, the manufacturer shall replace the new  
18 motor vehicle with a comparable new motor vehicle which  
19 does conform to the warranties.

**§46A-6A-4. Civil action by consumer.**

1 (a) If the nonconformity results in substantial impairment  
2 to the use or market value of the new motor vehicle and the  
3 manufacturer has not replaced the new motor vehicle pur-  
4 suant to the provisions of section three of this article, or if  
5 the nonconformity exists after a reasonable number of at-  
6 tempts to conform the new motor vehicle to the applicable  
7 express warranties, the consumer shall have a cause of action  
8 against the manufacturer in the circuit court of any county  
9 having venue.

10 (b) In any action under this section, the consumer may be  
11 awarded all or any portion of the following:

12 (1) Revocation of acceptance and refund of the purchase  
13 price, including, but not limited to, sales tax, license and  
14 registration fees, and other reasonable expenses incurred for  
15 the purchase of the new motor vehicle, or if there be no such  
16 revocation of acceptance, damages for diminished value of  
17 the motor vehicle;

18 (2) Damages for the cost of repairs reasonably required to  
19 conform the motor vehicle to the express warranty;

20 (3) Damages for the loss of use, annoyance or inconve-  
21 nience resulting from the nonconformity, including, but not  
22 limited to, reasonable expenses incurred for replacement  
23 transportation during any period when the vehicle is out of

24 service by reason of the nonconformity or by reason of re-  
25 pair; and

26 (4) Reasonable attorney fees.

27 (c) It is an affirmative defense to any claim under this  
28 section (i) that an alleged nonconformity does not substan-  
29 tially impair the use or market value or (ii) that a noncon-  
30 formity is the result of abuse, neglect or unauthorized modi-  
31 fications or alterations of a motor vehicle by anyone other  
32 than the manufacturer, its agent or its authorized dealer.

33 (d) An action brought under this section by the consumer  
34 must be commenced within one year of the expiration of the  
35 express warranty term.

36 (e) The cause of action provided for in this section shall  
37 be available only against the manufacturer.

**§46A-6A-5. Presumption of reasonable number of attempts; ex-  
tension of warranty term when repair services un-  
available.**

1 (a) It is presumed that a reasonable number of attempts  
2 have been undertaken to conform a new motor vehicle to the  
3 applicable express warranties, if the same nonconformity has  
4 been subject to repair three or more times by the manufac-  
5 turer, its agents or its authorized dealers within the express  
6 warranty term or during the period of one year following the  
7 date of original delivery of the motor vehicle to the consumer,  
8 whichever is the earlier date, and the nonconformity con-  
9 tinues to exist, or the vehicle is out of service by reason of  
10 repair for a cumulative total of thirty or more calendar days  
11 during the term or during the one-year period, whichever is  
12 the earlier date.

13 (b) If the nonconformity results in a condition which is  
14 likely to cause death or serious bodily injury if the vehicle is  
15 driven, it is presumed that a reasonable number of attempts  
16 have been undertaken to conform the vehicle to the applicable  
17 express warranties if the nonconformity has been subject to  
18 repair at least once by the manufacturer within the express  
19 warranty term or during the period of one year following the

20 date of original delivery of the motor vehicle to a consumer,  
21 whichever is the earlier date, and the nonconformity contin-  
22 ues to exist.

23 (c) The presumption that a reasonable number of attempts  
24 have been undertaken to conform a new motor vehicle to the  
25 applicable express warranties applies against a manufacturer  
26 only if the manufacturer has received prior written notifica-  
27 tion from or on behalf of the consumer and has had at least  
28 one opportunity to cure the defect alleged.

29 (d) The term of an express warranty, the one-year period  
30 and the thirty-day period shall be extended by any period of  
31 time during which repair services are not available to the  
32 consumer because of a war, invasion, strike or fire, flood or  
33 other natural disaster.

**§46A-6A-6. Written statement to be provided to consumer.**

1 At the time of purchase, the manufacturer, either directly  
2 or through its agent or its authorized dealer, must provide  
3 the consumer a written statement on a separate piece of  
4 paper, in ten point all capital type, in substantially the follow-  
5 ing form: "IMPORTANT: IF THIS VEHICLE IS DEFEC-  
6 TIVE, YOU MAY BE ENTITLED UNDER STATE LAW  
7 TO A REPLACEMENT OR TO COMPENSATION. HOW-  
8 EVER, TO BE ENTITLED TO A REPLACEMENT OR  
9 TO COMPENSATION, YOU MUST FIRST NOTIFY THE  
10 MANUFACTURER OF THE PROBLEM IN WRITING  
11 AND PROVIDE THE MANUFACTURER AN OPPOR-  
12 TUNITY TO REPAIR THE VEHICLE."

**§46A-6A-7. Resale of returned motor vehicle.**

1 If a new motor vehicle has been returned under section  
2 three of this article or a similar statute of another state, it  
3 may not be resold in this state unless the manufacturer cor-  
4 rects the nonconformity and provides the consumer with a  
5 written statement on a separate piece of paper in ten point all  
6 capital type, in substantially the following form: "IMPOR-  
7 TANT: THIS VEHICLE WAS RETURNED TO THE  
8 MANUFACTURER BECAUSE IT DID NOT CONFORM

9 TO THE MANUFACTURER'S EXPRESS WARRANTY  
10 AND THE NONCONFORMITY WAS NOT CURED  
11 WITHIN A REASONABLE TIME AS PROVIDED BY  
12 WEST VIRGINIA LAW.”: *Provided*, That no manufacturer  
13 shall require by agreement or otherwise, either directly or  
14 indirectly, that any of its authorized dealers in this state ac-  
15 cept such a motor vehicle for resale.

**§46A-6A-8. Third party dispute resolution process; attorney gen-  
eral to promulgate rules and regulations.**

1 (a) The attorney general of the state of West Virginia shall  
2 promulgate rules and regulations for the establishment and  
3 qualification of a third party dispute mechanism or mecha-  
4 nisms for the resolution of warranty disputes between the  
5 consumer and the manufacturer, its agent or its authorized  
6 dealer. Such mechanisms shall be under the supervision of  
7 the division of consumer protection in the office of the at-  
8 torney general, and shall meet or exceed the minimum re-  
9 quirements of the informal dispute settlement mechanism  
10 as provided by the Magnuson-Moss Warranty Federal Trade  
11 Commission Improvement Act (Public Law 93-637) and  
12 rules and regulations lawfully promulgated thereunder effec-  
13 tive the first day of January, one thousand nine hundred  
14 eighty-four.

15 (b) If a qualified third party dispute resolution process  
16 exists and the consumer receives timely notification in writ-  
17 ing of the availability of the third party process with a de-  
18 scription of its operation and effect, the cause of action under  
19 section four of this article may not be asserted by the con-  
20 sumer until after the consumer has initially resorted to the  
21 third party process. Notification of the availability of the  
22 third party process must be timely to the consumer. If a quali-  
23 fied third party dispute resolution process does not exist, or  
24 if the consumer is dissatisfied with the third party decision,  
25 or if the manufacturer, its agent or its authorized dealer fails  
26 to promptly fulfill the terms of the third party decision, the  
27 consumer may assert a cause of action under section four of  
28 this article.

29 (c) Any period of limitation of actions under any federal

30 or West Virginia laws with respect to any consumer shall be  
31 tolled for the period between the date a complaint is filed  
32 with a third party dispute resolution process and the date of  
33 its decision or the date before which the manufacturer, its  
34 agent or its authorized dealer is required by the decision to  
35 fulfill its terms, whichever occurs later.

**§46A-6A-9. Other remedies available.**

1 Nothing in this article shall be construed to limit any right  
2 or remedy which is otherwise available to a consumer or  
3 authorized dealer of a manufacturer under any other law.

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## CHAPTER 41

(H. B. 1479—By Delegate Murensky and Delegate Smith)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirteen, article four, chapter thirty-three of said code; to amend and reenact section four, article nine, chapter forty-seven of said code; and to amend and reenact sections thirty-one and thirty-three, article three, chapter fifty-six of said code, all relating to fees charged by the secretary of state for acceptance of service of legal process upon resident corporations, certain non-resident corporations, unlicensed insurers, limited partnerships, nonresident motorists and other nonresidents having certain contacts with this state.

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

That section fifteen, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section thirteen, article four, chapter thirty-three of said code be amended and reenacted; that section four, article nine, chapter forty-seven of said code be amended and reenacted; and that sections thirty-one and thirty-three, article

three, chapter fifty-six of said code be amended and reenacted, all to read as follows:

**Chapter**

- 31. Corporations.
- 33. Insurance.
- 47. Regulation of Trade.
- 56. Pleading and Practice.

**CHAPTER 31. CORPORATIONS.**

**ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.**

**§31-1-15. Secretary of state constituted attorney-in-fact for all corporations; manner of acceptance or service of notices and process upon secretary of state; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section.**

1 The secretary of state is hereby constituted the attorney-in-  
2 fact for and on behalf of every corporation created by virtue of  
3 the laws of this state and every foreign corporation authorized  
4 to conduct affairs or do or transact business herein pursuant  
5 to the provisions of this article, with authority to accept  
6 service of notice and process on behalf of every such corpora-  
7 tion and upon whom service of notice and process may be  
8 made in this state for and upon every such corporation. No  
9 act of such corporation appointing the secretary of state such  
10 attorney-in-fact shall be necessary. Immediately after being  
11 served with or accepting any such process or notice, of which  
12 process or notice two copies for each defendant shall be fur-  
13 nished the secretary of state with the original notice or process,  
14 together with a fee of five dollars, the secretary of state shall  
15 file in his office a copy of such process or notice, with a note  
16 thereon endorsed of the time of service, or acceptance, as the  
17 case may be, and transmit one copy of such process or notice  
18 by registered or certified mail, return receipt requested, to the  
19 person to whom notice and process shall be sent, whose name  
20 and address were last furnished to the state officer at the time  
21 authorized by statute to accept service of notice and process  
22 and upon whom notice and process may be served; and if no  
23 such person has been named, to the principal office of the  
24 corporation at the address last furnished to the state officer



25 at the time authorized by statute to accept service of pro-  
26 cess and upon whom process may be served, as required by  
27 law. No process or notice shall be served on the secretary of  
28 state or accepted by him less than ten days before the return  
29 day thereof. Such corporation shall pay the annual fee pre-  
30 scribed by article twelve, chapter eleven of this code for the  
31 services of the secretary of state as its attorney-in-fact.

32 Any foreign corporation which shall conduct affairs or  
33 do or transact business in this state without having been  
34 authorized so to do pursuant to the provisions of this article  
35 shall be conclusively presumed to have appointed the secre-  
36 tary of state as its attorney-in-fact with authority to accept  
37 service of notice and process on behalf of such corporation  
38 and upon whom service of notice and process may be made  
39 in this state for and upon every such corporation in any action  
40 or proceeding described in the next following paragraph of  
41 this section. No act of such corporation appointing the sec-  
42 retary of state as such attorney-in-fact shall be necessary.  
43 Immediately after being served with or accepting any such  
44 process or notice, of which process or notice two copies for  
45 each defendant shall be furnished the secretary of state with  
46 the original notice or process, together with a fee of five dollars,  
47 the secretary of state shall file in his office a copy of such  
48 process or notice, with a note thereon endorsed of the time  
49 of service or acceptance, as the case may be, and transmit  
50 one copy of such process or notice by registered or certified  
51 mail, return receipt requested, to such corporation at the  
52 address of its principal office, which address shall be stated  
53 in such process or notice. Such service or acceptance of such  
54 process or notice shall be sufficient if such return receipt shall  
55 be signed by an agent or employee of such corporation, or the  
56 registered or certified mail so sent by the secretary of state is  
57 refused by the addressee and the registered or certified mail  
58 is returned to the secretary of state, or to his office, showing  
59 thereon the stamp of the United States postal service that  
60 delivery thereof has been refused, and such return receipt or  
61 registered or certified mail is appended to the original process  
62 or notice and filed therewith in the clerk's office of the court  
63 from which such process or notice was issued. No process or  
64 notice shall be served on the secretary of state or accepted by

65 him less than ten days before the return date thereof. The court  
66 may order such continuances as may be reasonable to afford  
67 each defendant opportunity to defend the action or proceed-  
68 ings.

69 For the purpose of this section, a foreign corporation not  
70 authorized to conduct affairs or do or transact business in this  
71 state pursuant to the provisions of this article shall neverthe-  
72 less be deemed to be conducting affairs or doing or trans-  
73 acting business herein (a) if such corporation makes a contract  
74 to be performed, in whole or in part, by any party thereto, in  
75 this state, (b) if such corporation commits a tort in whole or  
76 in part in this state, or (c) if such corporation manufactures,  
77 sells, offers for sale or supplies any product in a defective  
78 condition and such product causes injury to any person or  
79 property within this state notwithstanding the fact that such  
80 corporation had no agents, servants or employees or con-  
81 tacts within this state at the time of said injury. The making  
82 of such contract, the committing of such tort or the manu-  
83 facture or sale, offer of sale or supply of such defective product  
84 as hereinabove described shall be deemed to be the agree-  
85 ment of such corporation that any notice or process served  
86 upon, or accepted by, the secretary of state pursuant to the  
87 next preceding paragraph of this section in any action or  
88 proceeding against such corporation arising from, or growing  
89 out of, such contract, tort, or manufacture or sale, offer of  
90 sale or supply of such defective product shall be of the same  
91 legal force and validity as process duly served on such cor-  
92 poration in this state.

### CHAPTER 33. INSURANCE.

#### ARTICLE 4. GENERAL PROVISIONS.

##### §33-4-13. Service of process on unlicensed insurers.

1 (a) The purpose of this section is to subject certain in-  
2 surers to the jurisdiction of the courts of this state in suits  
3 by or on behalf of insureds or beneficiaries under certain  
4 insurance contracts and to subject said insurers to the juris-  
5 diction of the courts of this state in suits by or on behalf of  
6 the insurance commissioner of West Virginia. The Legislature  
7 declares that it is a subject of concern that certain insurers,

8 while not licensed to transact insurance in this state, are solicit-  
9 ing the sale of insurance and selling insurance to residents of  
10 this state, thus presenting the insurance commissioner with  
11 the problem of resorting to courts of foreign jurisdictions for  
12 the purpose of enforcing the insurance laws of this state for  
13 the protection of our citizens. The Legislature declares that  
14 it is also a subject of concern that many residents of this state  
15 hold policies of insurance issued or delivered in this state by  
16 insurers while not licensed to transact insurance in this state,  
17 thus presenting to such residents the often insuperable ob-  
18 stacle of resorting to distant fora for the purpose of asserting  
19 legal rights under such policies. In furtherance of such state  
20 interest, the Legislature herein provides a method of sub-  
21 stituted service of process upon such insurers and declares  
22 that in so doing it exercises its powers to protect its residents  
23 and to define, for the purpose of this section, what constitutes  
24 transacting insurance in this state, and also exercises powers  
25 and privileges available to the state by virtue of public law  
26 number fifteen, seventy-ninth Congress of the United States,  
27 chapter twenty, first session, Senate number three hundred  
28 forty, as amended, which declares that the business of in-  
29 surance and every person engaged therein shall be subject to  
30 the laws of the several states.

31 (b) (1) Any of the following acts in this state, effected by  
32 mail or otherwise, by an unlicensed foreign or alien insurer:  
33 (i) The issuance or delivery of contracts of insurance to resi-  
34 dents of this state or to corporations authorized to do business  
35 therein, (ii) the solicitation of applications for such contracts,  
36 (iii) the collection of premiums, membership fees, assessments  
37 or other considerations for such contracts, or (iv) any other  
38 transaction of business, is equivalent to and shall constitute  
39 an appointment by such insurer of the secretary of state and  
40 his successor in office, to be its true and lawful attorney, upon  
41 whom may be served all lawful process in any action, suit or  
42 proceeding instituted by or on behalf of an insured or bene-  
43 ficiary arising out of any such contract of insurance, and in  
44 any action, suit or proceeding which may be instituted by the  
45 insurance commissioner in the name of any such insured or  
46 beneficiary or in the name of the state of West Virginia, and  
47 any such act shall be signification of its agreement that such

48 service of process is of the same legal force and validity as  
49 personal service of process in this state upon such insurer.

50 (2) Such service of process upon any such insurer in any  
51 such action or proceeding in any court of competent jurisdic-  
52 tion of this state may be made by serving the secretary of  
53 state or his chief clerk with two copies and an original thereof  
54 and the payment to him of a fee of five dollars. The secretary  
55 of state shall forward a copy of such process by registered or  
56 certified mail to the defendant at its last-known principal  
57 place of business and shall keep a record of all process so  
58 served upon him. Such service of process is sufficient,  
59 provided notice of such service and a copy of the process are  
60 sent within ten days thereafter by or on behalf of the plain-  
61 tiff to the defendant at its last-known principal place of busi-  
62 ness by registered or certified mail with return receipt re-  
63 quested. The plaintiff shall file with the clerk of the court in  
64 which the action is pending, or with the judge or justice of  
65 such court in case there be no clerk, an affidavit of com-  
66 pliance herewith, a copy of the process and either a return  
67 receipt purporting to be signed by the defendant or a person  
68 qualified to receive its registered or certified mail in accord-  
69 ance with the rules and customs of the post-office department;  
70 or, if acceptance was refused by the defendant or its agent,  
71 the original envelope bearing a notation by the postal author-  
72 ities that receipt was refused. Service of process so made shall  
73 be deemed to have been made within the territorial jurisdic-  
74 tion of any court in this state.

75 (3) Service of process in any such action, suit or proceeding  
76 shall in addition to the manner provided in subdivision (2) of  
77 this subsection (b) be valid if served upon any person within  
78 this state who, in this state on behalf of such insurer, is

79 (A) Soliciting insurance, or

80 (B) Making, issuing or delivering any contract of insur-  
81 ance, or

82 (C) Collecting or receiving any premium, membership fee,  
83 assessment or other consideration for insurance: *Provided*,  
84 That notice of such service and a copy of such process are  
85 sent within ten days thereafter, by or on behalf of the plain-

86 tiff to the defendant at the last-known principal place of  
87 business of the defendant, by registered or certified mail  
88 with return receipt requested. The plaintiff shall file with the  
89 clerk of the court in which the action is pending, or with the  
90 judge or justice of such court in case there be no clerk, an  
91 affidavit of compliance herewith, a copy of the process and  
92 either a return receipt purporting to be signed by the defen-  
93 dant or a person qualified to receive its registered or certified  
94 mail in accordance with the rules and customs of the post-  
95 office department; or, if acceptance was refused by the defen-  
96 dant or its agent, the original envelope bearing a notation by  
97 the postal authorities that receipt was refused.

98 (4) The papers referred to in subdivisions (2) and (3) of  
99 this subsection (b) shall be filed within thirty days after the  
100 return receipt or other official proof of delivery or the original  
101 envelope bearing a notation of refusal, as the case may be, is  
102 received by the plaintiff. Service of process shall be complete  
103 ten days after such process and the accompanying papers are  
104 filed in accordance with this section.

105 (5) Nothing in this section contained shall limit or abridge  
106 the right to serve any process, notice or demand upon any  
107 insurer in any other manner now or hereafter permitted by  
108 law.

109 (c) (1) Before any unlicensed foreign or alien insurer shall  
110 file or cause to be filed any pleading in any action, suit or  
111 proceeding instituted against it, such unlicensed insurer shall  
112 either (i) deposit with the clerk of the court in which such  
113 action, suit or proceeding is pending, cash or securities or file  
114 with such clerk a bond with good and sufficient sureties, to  
115 be approved by the court, in an amount to be fixed by the  
116 court sufficient to secure the payment of any final judgment  
117 which may be rendered in such action: *Provided*, That the  
118 court may in its discretion make an order dispensing with  
119 such deposit or bond where the auditor of the state shall have  
120 certified to such court that such insurer maintains within this  
121 state funds or securities in trust or otherwise sufficient and  
122 available to satisfy any final judgment which may be entered  
123 in such action, suit or proceeding; or (ii) procure a license to  
124 transact insurance in this state.

125 (2) The court in any action, suit or proceeding in which  
126 service is made in the manner provided in subdivision (2) or  
127 (3), subsection (b) of this section may, in its discretion, order  
128 such postponement as may be necessary to afford the defen-  
129 dant reasonable opportunity to comply with the provisions of  
130 subdivision (1) of this subsection (c) and to defend such action.

131 (3) Nothing in subdivision (1) of this subsection (c) is to  
132 be construed to prevent an unlicensed foreign or alien insurer  
133 from filing a motion to set aside service thereof made in the  
134 manner provided in subdivision (2) or (3), subsection (b) of  
135 this section on the grounds either (i) that such unlicensed in-  
136 surer has not done any of the acts enumerated in subdivision  
137 (1), subsection (b) of this section, or (ii) that the person on  
138 whom service was made pursuant to subdivision (3), sub-  
139 section (b) of this section was not doing any of the acts  
140 therein enumerated.

141 (d) In any action against an unlicensed foreign or alien  
142 insurer upon a contract of insurance issued or delivered in  
143 this state to a resident thereof or to a corporation authorized to  
144 do business therein, if the insurer has failed for thirty days  
145 after demand prior to the commencement of the action to  
146 make payment in accordance with the terms of the contract,  
147 and it appears to the court that such refusal was vexatious  
148 and without reasonable cause, the court may allow to the  
149 plaintiff a reasonable attorney's fee and include such fee in  
150 any judgment that may be rendered in such action. Such fee  
151 shall not exceed twelve and one-half percent of the amount  
152 which the court finds the plaintiff is entitled to recover against  
153 the insurer, but in no event shall such fee be less than twenty-  
154 five dollars. Failure of an insurer to defend any such action  
155 shall be deemed prima facie evidence that its failure to make  
156 payment was vexatious and without reasonable cause.

157 (e) The provisions of this section shall not apply to any  
158 suit, action or proceeding against any unlicensed foreign or  
159 alien insurer arising out of any contract of excess line insur-  
160 ance effected in accordance with article twelve of this chapter  
161 where any such contract contains a provision designating the  
162 auditor or secretary of state its true and lawful attorney upon  
163 whom may be served all lawful process in any action, suit or

164 proceeding instituted by or on behalf of an insured or bene-  
165 ficiary arising out of such contract of insurance.

## CHAPTER 47. REGULATION OF TRADE.

### ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

**§47-9-4. Secretary of state constituted attorney-in-fact for all limited partnerships; manner of acceptance or service of notice and process upon secretary of state; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section.**

1 The secretary of state is hereby constituted the attorney-in-  
2 fact for and on behalf of every limited partnership created by  
3 virtue of the laws of this state and every foreign limited part-  
4 nership authorized to conduct affairs or do or transact busi-  
5 ness herein pursuant to the provisions of this article, with  
6 authority to accept service of notice and process on behalf of  
7 every such limited partnership and upon whom service of  
8 notice and process may be made in this state for and upon  
9 every such limited partnership. No act of such limited part-  
10 nership appointing the secretary of state such attorney-in-fact  
11 shall be necessary. Immediately after being served with or  
12 accepting any such process or notice, of which process or  
13 notice two copies for each defendant shall be furnished the  
14 secretary of state with the original notice or process, together  
15 with a fee of five dollars, the secretary of state shall file in  
16 his office a copy of such process or notice, with a note there-  
17 on endorsed of the time of service or acceptance, as the case  
18 may be, and transmit one copy of such process or notice by  
19 registered or certified mail, return receipt requested, to the  
20 person to whom notice and process shall be sent, whose name  
21 and address were last furnished to the state officer at the time  
22 authorized by statute to accept service of notice and process  
23 and upon whom notice and process may be served; and if no  
24 such person has been named, to the principal office of the  
25 limited partnership at the address last furnished to the state  
26 officer at the time authorized by statute to accept service of  
27 process and upon whom process may be served, as required  
28 by law. No process or notice shall be served on the secretary  
29 of state or accepted by him less than ten days before the

30 return day thereof. Such limited partnership shall pay the  
31 annual fee prescribed by article twelve, chapter eleven of this  
32 code for the services of the secretary of state as its attorney-  
33 in-fact.

34 Any foreign limited partnership which shall conduct affairs  
35 or do or transact business in this state without having been  
36 authorized so to do pursuant to the provisions of this article  
37 shall be conclusively presumed to have appointed the secretary  
38 of state as its attorney-in-fact with authority to accept service  
39 of notice and process on behalf of such limited partnership  
40 and upon whom service of notice and process may be made in  
41 this state for and upon every such limited partnership in any  
42 action or proceeding described in the next following paragraph  
43 of this section. No act of such limited partnership appointing  
44 the secretary of state as such attorney-in-fact shall be neces-  
45 sary. Immediately after being served with or accepting any  
46 such process or notice, of which process or notice two copies  
47 for each defendant shall be furnished the secretary of state  
48 with the original notice or process, together with a fee of five  
49 dollars, the secretary of state shall file in his office a copy of  
50 such process or notice, with a note thereon endorsed of the  
51 time of service or acceptance, as the case may be, and trans-  
52 mit one copy of such process or notice by registered or certi-  
53 fied mail, return receipt requested, to such limited partnership  
54 at the address of its principal office, which address shall be  
55 stated in such process or notice. Such service or acceptance of  
56 such process or notice shall be sufficient if such return receipt  
57 shall be signed by an agent or employee of such limited part-  
58 nership, or the registered or certified mail so sent by the secre-  
59 tary of state is refused by the addressee and the registered or  
60 certified mail is returned to the secretary of state, or to his  
61 office, showing thereon the stamp of the United States postal  
62 service that delivery thereof has been refused, and such return  
63 receipt or registered or certified mail is appended to the  
64 original process or notice and filed therewith in the clerk's  
65 office of the court from which such process or notice was  
66 issued. No process or notice shall be served on the secretary  
67 of state or accepted by him less than ten days before the re-  
68 turn date thereof. The court may order such continuances as



69 may be reasonable to afford each defendant opportunity to  
70 defend the action or proceedings.

71 For the purpose of this section, a foreign limited partner-  
72 ship not authorized to conduct affairs or do or transact busi-  
73 ness in this state pursuant to the provisions of this article shall  
74 nevertheless be deemed to be conducting affairs or doing or  
75 transacting business herein (a) if such limited partnership  
76 makes a contract to be performed, in whole or in part, by any  
77 party thereto in this state, (b) if such limited partnership  
78 commits a tort in whole or in part in this state, or (c) if such  
79 limited partnership manufactures, sells, offers for sale or sup-  
80 plies any product in a defective condition and such product  
81 causes injury to any person or property within this state not-  
82 withstanding the fact that such limited partnership had no  
83 agents, servants or employees or contacts within this state at  
84 the time of said injury. The making of such contract, the  
85 committing of such tort or the manufacture or sale, offer of  
86 sale or supply of such defective product as hereinabove de-  
87 scribed shall be deemed to be the agreement of such limited  
88 partnership that any notice or process served upon, or accepted  
89 by, the secretary of state pursuant to the next preceding para-  
90 graph of this section in any action or proceeding against such  
91 limited partnership arising from or growing out of such con-  
92 tract, tort or manufacture or sale, offer of sale or supply of  
93 such defective product shall be of the same legal force and  
94 validity as process duly served on such limited partnership in  
95 this state.

## CHAPTER 56. PLEADING AND PRACTICE.

### ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-31. Actions by or against nonresident operators of motor vehicles in-  
volved in highway accidents or their administrators, etc.

§56-3-33. Actions by or against nonresident persons having certain contracts  
with this state; authorizing secretary of state to receive process;  
bond and fees; service of process; definitions; retroactive ap-  
plication.

§56-3-31. **Actions by or against nonresident operators of motor  
vehicles involved in highway accidents or their ad-  
ministrators, etc.**

1 The operation by a nonresident, or by his duly authorized  
2 agent, of a motor vehicle upon a public street, road or high-  
3 way of this state shall be deemed equivalent to an appoint-  
4 ment by such nonresident of the secretary of state, or his  
5 successor in office, to be his true and lawful attorney, or the  
6 true and lawful attorney of his administrator, administratrix,  
7 executor or executrix in the event said nonresident is a  
8 natural person and dies, upon whom may be served all law-  
9 ful process in any action or proceeding against him or if a  
10 natural person against his administrator, administratrix, exe-  
11 cutor or executrix, in any court of record in this state, includ-  
12 ing an action or proceeding brought by a nonresident plaintiff  
13 or plaintiffs, growing out of any accident or collision in which  
14 such nonresident may be involved while so operating or so  
15 permitting to be operated a motor vehicle on any such street,  
16 road or highway, and such operation shall be a signification  
17 of his agreement that any such process against him, or if a  
18 natural person against his administrator, administratrix, execu-  
19 tor or executrix, which is served in the manner hereinafter pro-  
20 vided, shall be of the same legal force and validity as though  
21 said nonresident or if a natural person his administrator, ad-  
22 ministratrix, executor or executrix were personally served with  
23 a summons and complaint within this state.

24 Any such action or proceeding may be instituted, continued  
25 or maintained on behalf of or against the administrator, ad-  
26 ministratrix, executor or executrix of said nonresident who  
27 dies during or subsequent to said operation of a motor vehicle  
28 by such nonresident or his duly authorized agent.

29 (a) At the time of filing a complaint and before a summons  
30 is issued thereon, the plaintiff, or someone for him, shall  
31 execute a bond in the sum of one hundred dollars before the  
32 clerk of the court, with surety to be approved by said clerk,  
33 conditioned that on failure of the plaintiff to prevail in the  
34 action that he will reimburse the defendant, or cause him to be  
35 reimbursed, the necessary expense incurred by him in and  
36 about the defense of the action in this state, and upon the issue  
37 of a summons the clerk will certify thereon that said bond has  
38 been given and approved. Service shall be made by leaving the  
39 original and two copies of both the summons and complaint

40 with the certificate aforesaid of the clerk thereon, and a fee of  
41 five dollars with said secretary of state, or in his office, and  
42 said service shall be sufficient upon said nonresident or if a  
43 natural person his administrator, administratrix, executor or  
44 executrix: *Provided*, That notice of such service and a copy of  
45 the summons and complaint shall forthwith be sent by regis-  
46 tered or certified mail, return receipt requested, by said secre-  
47 tary of state to the defendant, and the defendant's return re-  
48 ceipt signed by himself or his duly authorized agent or the  
49 registered or certified mail so sent by said secretary of state is  
50 refused by the addressee and the registered or certified mail  
51 is returned to said secretary of state, or to his office, showing  
52 thereon the stamp of the post-office department that delivery  
53 has been refused, is appended to the original summons and  
54 complaint and filed therewith in the clerk's office of the court  
55 from which process issued. The court may order such con-  
56 tinuances as may be reasonable to afford the defendant op-  
57 portunity to defend the action.

58 (b) The fee of five dollars, remitted to the secretary of  
59 state at the time of service, shall be taxed in the costs of the  
60 proceeding and the secretary of state shall pay into the state  
61 treasury all funds so coming into his hands from such service.  
62 The secretary of state shall keep a record in his office of all  
63 such process and the day and hour of service thereof.

64 (c) The following words and phrases, when used in this  
65 article, shall, for the purpose of this article and unless a dif-  
66 ferent intent on the part of the Legislature be apparent from  
67 the context, have the following meanings:

68 (1) "Duly authorized agent" means and includes among  
69 others a person who operates a motor vehicle in this state for  
70 a nonresident as defined in this section and chapter, in pur-  
71 suit of business, pleasure or otherwise, or who comes into this  
72 state and operates a motor vehicle therein for, or with the  
73 knowledge or acquiescence of, such nonresident; and includes  
74 among others a member of the family of such nonresident or  
75 a person who, at the residence, place of business or post  
76 office of such nonresident, usually receives and receipts for  
77 mail addressed to such nonresident.

78 (2) "Motor vehicle" means and includes any self-propelled  
79 vehicle, including motorcycle, tractor and trailer, not operated  
80 exclusively upon stationary tracks.

81 (3) "Nonresident" means any person who is not a resident  
82 of this state or resident who has moved from the state sub-  
83 sequent to said accident or collision, and among others in-  
84 cludes a nonresident firm, partnership, corporation or volun-  
85 tary association, or a firm, partnership, corporation or volun-  
86 tary association that has moved from the state subsequent to  
87 said accident or collision.

88 (4) "Nonresident plaintiff or plaintiffs" means a nonresi-  
89 dent who institutes an action in a court in this state having  
90 jurisdiction against a nonresident in pursuance of the pro-  
91 visions of this article.

92 (5) "Street," "road" or "highway" means the entire width  
93 between property lines of every way or place of whatever  
94 nature when any part thereof is open to the use of the public,  
95 as a matter of right, for purposes of vehicular traffic.

96 (d) The provision for service of process herein is cumulative  
97 and nothing herein contained shall be construed as a bar to the  
98 plaintiff in any action from having process in such action  
99 served in any other mode and manner provided by law.

**§56-3-33. Actions by or against nonresident persons having certain contracts with this state; authorizing secretary of state to receive process; bond and fees; service of process; definitions; retroactive application.**

1 (a) The engaging by a nonresident, or by his duly autho-  
2 rized agent, in any one or more of the acts specified in sub-  
3 divisions (1) through (7) of this subsection shall be deemed  
4 equivalent to an appointment by such nonresident of the  
5 secretary of state, or his successor in office, to be his true and  
6 lawful attorney upon whom may be served all lawful process  
7 in any action or proceeding against him, in any circuit court  
8 in this state, including an action or proceeding brought by a  
9 nonresident plaintiff or plaintiffs, for a cause of action arising  
10 from or growing out of such act or acts, and the engaging in  
11 such act or acts shall be a signification of such nonresident's

12 agreement that any such process against him, which is served  
13 in the manner hereinafter provided, shall be of the same legal  
14 force and validity as though such nonresident were personally  
15 served with a summons and complaint within this state:

16 (1) Transacting any business in this state;

17 (2) Contracting to supply services or things in this state;

18 (3) Causing tortious injury by an act or omission in this  
19 state;

20 (4) Causing tortious injury in this state by an act or omi-  
21 sion outside this state if he regularly does or solicits business,  
22 or engages in any other persistent course of conduct, or derives  
23 substantial revenue from goods used or consumed or services  
24 rendered in this state;

25 (5) Causing injury in this state to any person by breach of  
26 warranty expressly or impliedly made in the sale of goods out-  
27 side this state when he might reasonably have expected such  
28 person to use, consume or be affected by the goods in this  
29 state: *Provided*, That he also regularly does or solicits business,  
30 or engages in any other persistent course of conduct, or de-  
31 rives substantial revenue from goods used or consumed or  
32 services rendered in this state;

33 (6) Having an interest in, using or possessing real property  
34 in this state; or

35 (7) Contracting to insure any person, property or risk  
36 located within this state at the time of contracting.

37 (b) When jurisdiction over a nonresident is based solely  
38 upon the provisions of this section, only a cause of action  
39 arising from or growing out of one or more of the acts specified  
40 in subdivisions (1) through (7), subsection (a) of this section  
41 may be asserted against him.

42 (c) At the time of filing a complaint and before a summons  
43 is issued thereon, the plaintiff, or someone for him, shall  
44 execute a bond in the sum of one hundred dollars before the  
45 clerk of the court, with surety to be approved by said clerk,  
46 conditioned that on failure of the plaintiff to prevail in the  
47 action or proceeding that he will reimburse the defendant, or

48 cause him to be reimbursed, the necessary taxable costs in-  
49 curred by him in and about the defense of the action or pro-  
50 ceeding in this state, and upon the issuance of a summons, the  
51 clerk shall certify thereon that such bond has been given and  
52 approved. Service shall be made by leaving the original and  
53 two copies of both the summons and the complaint with the  
54 certificate aforesaid of the clerk thereon, and a fee of five  
55 dollars with the secretary of state, or in his office, and such  
56 service shall be sufficient upon such nonresident: *Provided,*  
57 That notice of such service and a copy of the summons and  
58 complaint shall forthwith be sent by registered or certified  
59 mail, return receipt requested, by the secretary of state to the  
60 defendant and the defendant's return receipt signed by himself  
61 or his duly authorized agent or the registered or certified mail  
62 so sent by the secretary of state which is refused by the ad-  
63 dressee and which registered or certified mail is returned to  
64 the secretary of state, or to his office, showing thereon the  
65 stamp of the post-office department that delivery has been  
66 refused, shall be appended to the original summons and com-  
67 plaint and filed therewith in the clerk's office of the court  
68 from which process issued. If any defendant served with sum-  
69 mons and complaint fails to appear and defend within thirty  
70 days of service, judgment by default may be rendered against  
71 him at any time thereafter. The court may order such contin-  
72 uances as may be reasonable to afford the defendant oppor-  
73 tunity to defend the action or proceeding.

74 (d) The fee of five dollars, remitted to the secretary of  
75 state at the time of service, shall be taxed in the costs of the  
76 action or proceeding and the secretary of state shall pay into  
77 the state treasury all funds so coming into his hands from  
78 such service. The secretary of state shall keep a record in his  
79 office of all such process and the day and hour of service  
80 thereof.

81 (e) The following words and phrases, when used in this  
82 section, shall for the purpose of this section and unless a dif-  
83 ferent intent be apparent from the context, have the following  
84 meanings:

85 (1) "Duly authorized agent" means and includes among  
86 others a person who, at the direction of or with the knowledge

87 or acquiescence of a nonresident, engages in such act or acts  
88 and includes among others a member of the family of such  
89 nonresident or a person who, at the residence, place of busi-  
90 ness or post office of such nonresident, usually receives and  
91 receipts for mail addressed to such nonresident.

92 (2) "Nonresident" means any person, other than voluntary  
93 unincorporated associations, who is not a resident of this state  
94 or a resident who has moved from this state subsequent to  
95 engaging in such act or acts, and among others includes a  
96 nonresident firm, partnership or corporation or a firm, part-  
97 nership or corporation which has moved from this state sub-  
98 sequent to any of said such act or acts.

99 (3) "Nonresident plaintiff or plaintiffs" means a nonresident  
100 of this state who institutes an action or proceeding in a circuit  
101 court in this state having jurisdiction against a nonresident of  
102 this state pursuant to the provisions of this section.

103 (f) The provision for service of process herein is cumula-  
104 tive and nothing herein contained shall be construed as a bar  
105 to the plaintiff in any action or proceeding from having pro-  
106 cess in such action served in any other mode or manner pro-  
107 vided by the law of this state or by the law of the place in  
108 which the service is made for service in that place in an action  
109 in any of its courts of general jurisdiction.

110 (g) This section shall not be retroactive and the provisions  
111 hereof shall not be available to a plaintiff in a cause of action  
112 arising from or growing out of any of said acts occurring prior  
113 to the effective date of this section.

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## CHAPTER 42

(H. B. 1631—By Delegate Bird and Delegate Schifano)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to industrial loan

companies; incorporators; corporate structure; stock to be paid in; use of certain words in name.

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

That section four, article seven, 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 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.**

**§31-7-4. Incorporators; name; minimum capital stock; voting rights of classes of stock; common stock to be paid in before business commenced; use of certain words in corporate name prohibited.**

1 (a) In the case of an industrial loan company, any  
2 number of persons may become an industrial loan company on  
3 the terms and conditions and subject to the liabilities prescribed  
4 in this article. The name of any industrial loan company  
5 formed under this article shall not contain the words "savings"  
6 or "savings and loan" and shall not be that of any other  
7 existing corporation of this state: *Provided*, That any such  
8 corporation heretofore organized which uses the words  
9 "savings and loan" as a part of its corporate name shall be  
10 authorized to continue to use such words. The capital stock  
11 of any such corporation shall not be less than twenty-five  
12 thousand dollars, and shall consist of shares of common stock.  
13 The voting power and control of the corporation during its life  
14 shall be vested in the common stock only if more than one  
15 class of stock is to be issued. Such common stock, with which  
16 it will commence business, shall be paid in before such corpora-  
17 tion shall be authorized to engage in business, except such  
18 business as is incidental and necessarily preliminary to its or-  
19 ganization.

20 (b) In the case of an industrial bank, any number of  
21 persons, not fewer than five, citizens of this state, may  
22 become an industrial bank on the terms and conditions and  
23 subject to the liabilities prescribed by this article and the  
24 provisions of article four, chapter thirty-one-a of this code  
25 subject to such exceptions contained in this article. The  
26 name of any industrial bank formed under the provisions of



27 this subsection shall be "Industrial Banking Corporation,"  
28 and shall include no other words except a trading area,  
29 community, city, county or other local identity approved  
30 by the board. The capital stock requirements of any such  
31 industrial bank shall be the same as those prescribed in  
32 subsections (a) and (c), section three, article four, chapter  
33 thirty-one-a of this code. The voting power and control of  
34 any industrial bank shall be vested in the common stock  
35 only and such corporations shall issue but one class of stock.  
36 Such common stock with which it will commence business shall  
37 be paid in before such corporation shall be authorized to  
38 engage in business as an industrial bank except such business  
39 as is incidental and necessarily preliminary to its organization.

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## CHAPTER 43

(S. B. 461—By Senator Nelson)

[Passed March 7, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eighteen-b, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia economic development authority's making available state mortgage and industrial development investment pool funds for investment in industrial development; changing required security upon certain indebtednesses; amount of funds available; changing minimum interest rate.

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

That section four, article eighteen-b, 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 18B. MORTGAGE AND INDUSTRIAL DEVELOPMENT INVESTMENT POOL.**

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

1 (a) The West Virginia economic development authority  
2 may use for any investments authorized by sections seven  
3 and seven-a, article fifteen, chapter thirty-one of this  
4 code, up to one half of the funds of the state mortgage and  
5 industrial development investment pool: *Provided*, That  
6 the economic development authority shall deposit with  
7 the treasurer of the state for the credit of the state  
8 mortgage and industrial development pool such notes,  
9 security interests or bonds issued by the economic  
10 development authority evidencing the indebtedness of the  
11 authority to the pool.

12 (b) Such notes, security interests or bonds issued by  
13 the authority shall be secured by security equal to or  
14 better than the highest rating of at least two or more  
15 nationally recognized rating services such as Standard  
16 and Poor's, Dun and Bradstreet or Moody's: *Provided*,  
17 That notes, security interests or bonds evidencing in-  
18 debtedness of less than two million dollars may be secured  
19 by a letter of credit guarantee issued by a bank having an  
20 unsecured legal lending limit greater than one million  
21 dollars.

22 (c) The interest rate and the maturity dates of the  
23 notes, security interests or bonds held by the treasurer  
24 for the state mortgage and industrial development in-  
25 vestment pool shall be determined by the economic devel-  
26 opment authority according to the provisions of section  
27 eleven, article fifteen, chapter thirty-one of this code:  
28 *Provided*, That such interest rate shall not be less than  
29 the prior four-week auction average for thirteen-week  
30 treasury bills as published in the Wall Street Journal and  
31 such rate shall be valid for a term of not more than three  
32 years: *Provided, however*, That the economic develop-  
33 ment authority may determine a variable rate of interest  
34 to be adjusted no less frequently than semiannually, and  
35 such variable interest rate shall not be less than the prior  
36 four-week auction average for thirteen-week treasury  
37 bills as published in the Wall Street Journal.

## CHAPTER 44

(S. B. 565—By Senator Ash and Senator Harman)

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[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-b, relating to maintenance of the closed facility formerly known as the West Virginia Industrial home for boys at Grafton and the closed facility formerly known as the Leckie Center at Leckie.

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

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

### ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

#### §25-1-3b. Maintenance of closed facility at Grafton and Leckie.

1 The facility which has heretofore been known as the  
2 West Virginia industrial home for boys at Grafton and the  
3 Leckie Center at Leckie and which is no longer used as a  
4 state correctional institution and lies idle and unoccupied  
5 at the time this section becomes effective shall be main-  
6 tained on a minimal basis and kept secure from trespass  
7 or vandalism by the commissioner of corrections. Such  
8 maintenance and security shall be continued by the com-  
9 missioner of corrections until such time as this property  
10 and its appurtenances are sold or transferred to another  
11 state, county or municipal agency which assumes re-  
12 sponsibility for the maintenance and security of the  
13 facility.

## CHAPTER 45

(Com. Sub. for H. B. 1299—By Delegate Wiedebusch)

[Passed March 5, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections eight, nine, ten, eleven and twelve, article five, chapter sixty-one of said code, all relating to jails and penal, correctional and benevolent institutions and mental health facilities and offenses relating thereto generally; escape and aiding others to escape therefrom and various criminal penalties therefor; permitting persons confined in jails to escape and the criminal penalties therefor; rescue and the criminal penalties therefor; distinguishing between escapes prior to and after sentencing in certain cases and the criminal penalties for each; prohibiting the inducement to escape or the harboring of any inmate or patient of certain institutions or facilities and providing criminal penalties therefor; authorizing the return of such inmates or patients to such institutions or facilities; prohibiting trespassing or loitering upon the grounds of any such institution or facility or communicating with any inmate or patient therein and providing criminal penalties therefor; and prohibiting the purchase or acceptance of gift of certain property from any inmate or patient of any such institution or facility; and providing criminal penalties therefor.

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

That section eleven, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections eight, nine, ten, eleven and twelve, article five, chapter sixty-one of said code be amended and reenacted, all to read as follows:

### Chapter

**25. Department of Corrections.**

**61. Crimes and Their Punishment.**

**CHAPTER 25. DEPARTMENT OF CORRECTIONS.**

**ARTICLE 4. CENTERS FOR HOUSING YOUTHFUL MALE LAW OFFENDERS.****§25-4-11. Escape; aiding escape.**

1 Should any inmate of a center escape therefrom or from  
2 the custody of an officer or employee of the center, he shall  
3 be guilty of a felony, and, upon conviction thereof, shall be  
4 imprisoned in the penitentiary not less than one nor more  
5 than five years. Any person who knowingly permits or aids  
6 any inmate of such center to escape therefrom or conceals  
7 him with the intent of enabling him to elude pursuit is guilty  
8 of a felony, and, on conviction, shall be punished in a like  
9 manner as provided in this section for an inmate who escapes.

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.****ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.**

§61-5-8. Aiding adult or juvenile to escape from detention, imprisonment or custody; rescue; penalty.

§61-5-9. Permitting escape; refusal of custody of prisoner; penalties.

§61-5-10. Jail breaking by convicted or unconvicted prisoner; penalties.

§61-5-11. Escapes and aiding in escapes; terms of confinement in addition to previous sentence.

§61-5-12. Escapes from, and other offenses relating to, state benevolent and correctional institutions or mental health facilities; penalties.

**§61-5-8. Aiding adult or juvenile to escape from detention, imprisonment or custody; rescue; penalty.**

1 Where any adult or juvenile is lawfully detained in custody  
2 or as an inmate or prisoner in any jail or prison or as a  
3 resident of any juvenile facility or juvenile detention center,  
4 if any other person shall convey anything into the jail, prison,  
5 facility or detention center or other place of custody of such  
6 adult or juvenile with the intent to aid or facilitate such  
7 adult's or juvenile's escape or attempted escape therefrom, or  
8 if such other person shall forcibly rescue or attempt to rescue  
9 such adult or juvenile therefrom, such other person shall be  
10 guilty of a felony, and, upon conviction thereof, shall be  
11 confined in the penitentiary not less than one nor more than  
12 five years.

**§61-5-9. Permitting escape; refusal of custody of prisoner; penalties.**

1 If a jailer or other officer aid or voluntarily suffer a

2 prisoner convicted or charged with felony to escape from  
3 his custody, he shall be guilty of a felony, and, upon con-  
4 viction, shall be confined in the penitentiary not less than  
5 one nor more than five years. If any such jailer or other  
6 officer negligently, but not voluntarily, suffer a person con-  
7 victed of or charged with felony, or voluntarily or negligently  
8 suffer a person convicted of or charged with an offense not  
9 a felony, to escape from his custody, or willfully refuse to  
10 receive into his custody any person lawfully committed there-  
11 to, he shall be guilty of a misdemeanor, and, upon convic-  
12 tion, shall be confined in jail not less than six months, or be  
13 fined not exceeding one thousand dollars, or both such fine  
14 and confinement.

**§61-5-10. Jail breaking by convicted or unconvicted prisoner;  
penalties.**

1 (a) Any person confined in jail on conviction of a criminal  
2 offense, who escapes therefrom by force, violence, or by any  
3 subterfuge, device or deception, shall, if previously sentenced  
4 to confinement in the penitentiary, be guilty of a felony,  
5 and, upon conviction, shall be confined in the penitentiary for  
6 not less than one nor more than five years; and if he be  
7 previously sentenced to confinement in jail, he shall be guilty  
8 of a misdemeanor, and, upon conviction, shall be confined  
9 in jail one year.

10 (b) If any person be lawfully confined in jail and not  
11 sentenced on conviction of a criminal offense, shall escape  
12 therefrom by any means, such person shall, (i) if he be con-  
13 fined upon a charge of a felony, be guilty of an additional  
14 felony, and, upon conviction thereof, shall be confined in the  
15 penitentiary not less than one nor more than five years, or  
16 (ii) if he be confined upon a charge of a misdemeanor, be  
17 guilty of an additional misdemeanor, and, upon conviction  
18 thereof, shall be confined in jail one year.

**§61-5-11. Escapes and aiding in escapes; terms of confinement in  
addition to previous sentence.**

1 The terms of confinement specified in section eleven, article  
2 four, chapter twenty-five of this code or in sections eight,  
3 nine and ten of this article shall be in addition to the period

4 or periods of confinement to which any person convicted  
5 under this section may be subject to and shall commence at  
6 the expiration of any such former sentence.

**§61-5-12. Escapes from, and other offenses relating to, state benevolent and correctional institutions or mental health facilities; penalties.**

1 Except where otherwise provided, whoever abducts any  
2 person who is an inmate or patient of any state benevolent or  
3 correctional institution or mental health facility shall be guilty  
4 of a felony, and, upon conviction thereof, shall be imprisoned  
5 in the penitentiary for not less than one nor more than five  
6 years. Whoever persuades, induces or entices, or attempts  
7 to persuade, induce or entice, any person who is an inmate  
8 or patient of any such institution or facility to escape there-  
9 from, or whoever conceals or harbors any such person, know-  
10 ing him or her to have run away from any such institution or  
11 facility, shall be guilty of a misdemeanor, and, upon con-  
12 viction thereof, shall be fined not less than one hundred nor  
13 more than one thousand dollars, and in addition thereto, in  
14 the discretion of the court, may be imprisoned in the county  
15 jail not less than one nor more than six months.

16 Any fugitive from any state benevolent or correctional  
17 institution or mental health facility, may, on the order of the  
18 superintendent or other officer of such institution or facility,  
19 be arrested and returned to such institution or facility, or to  
20 any officer or agent thereof, by any sheriff, police officer  
21 or other person, and may also be arrested and returned by  
22 any officer or agent of such institution or facility.

23 Whoever trespasses, idles, lounges or loiters upon the  
24 grounds of any other state benevolent or correctional institu-  
25 tion or mental health facility or communicates, or attempts  
26 to communicate, by signals, signs, writings or otherwise with  
27 any inmate or patient of such institution or facility, or conveys  
28 or assists in any way in establishing communication between  
29 an inmate or patient of such institution or facility and any  
30 person or persons outside thereof, except as authorized by  
31 the rules or regulations in force by the authority governing the  
32 same, shall be guilty of a misdemeanor, and, upon conviction,

33 shall be fined not less than twenty nor more than five hundred  
34 dollars, or imprisoned not less than ten nor more than thirty  
35 days in the county jail, or both, in the discretion of the court  
36 or magistrate. Whoever, with intent to defraud, purchases,  
37 accepts as a gift, or secures by barter or trade, or in any  
38 other manner, any article of clothing from an inmate or patient  
39 of any state benevolent or correctional institution or mental  
40 health facility issued to him or her, by any officer of such  
41 institution or facility for his or her use, or, with such intent,  
42 secures any other article or articles belonging to any inmate or  
43 patient of such institution or facility or to such institution  
44 or facility from an inmate or patient thereof, shall be guilty  
45 of a misdemeanor, and, upon conviction thereof, shall be  
46 fined a sum not less than double the value of such articles,  
47 except that in no case shall the fine be less than one hundred  
48 dollars. Magistrates shall have jurisdiction of all misde-  
49 meanors included in this paragraph, concurrently with the  
50 circuit court.

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## CHAPTER 46

(Com. Sub. for H. B. 1822—By Delegate Wiedebusch)

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[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

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AN ACT to repeal sections twenty-seven-a, twenty-seven-b and twenty-eight, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-seven of said article, relating to commutation of prison sentences for good conduct, hereinafter referred to as "good time"; the manner of computing the time by which sentences are to be reduced or commuted; certain exceptions with respect to persons and types of sentences to which section would not apply; requiring the commissioner of corrections to promulgate disciplinary rules and procedures for determining infractions thereof; requiring that each inmate be given a copy thereof; the forfeiture or revocation of such time and for the reinstatement thereof in cer-



tain cases; requiring that inmates be informed as to their earliest eligible date of discharge pursuant to said section and a revised statement thereof in the case of such forfeiture or revocation; permitting extra good time in certain cases, with the approval of the governor; restoring all good time to inmates which had been previously forfeited or revoked and voiding all previously earned good time and granting such good time to all inmates according to said section; allowing certain previously earned good time to be retained in certain cases; and limiting future good time to be earned only in accordance with said section.

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

That sections twenty-seven-a, twenty-seven-b and twenty-eight, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section twenty-seven of said article be amended and reenacted to read as follows:

**ARTICLE 5. THE PENITENTIARY.**

**§28-5-27. Deduction from sentence for good conduct.**

1 (a) All adult inmates now in the custody of the commis-  
2 sioner of corrections, or hereafter committed to the custody of  
3 the commissioner of corrections, except those committed pur-  
4 suant to article four, chapter twenty-five of this code, shall be  
5 granted commutation from their sentences for good conduct  
6 in accordance with this section.

7 (b) Such commutation of sentence, hereinafter called "good  
8 time," shall be deducted from the maximum term of indeter-  
9 minate sentences or from the fixed term of determinate sen-  
10 tences.

11 (c) Each inmate committed to the custody of the commis-  
12 sioner of corrections and incarcerated in a penal facility pur-  
13 suant to such commitment shall be granted one day good time  
14 for each day he or she is incarcerated, including any and all  
15 days in jail awaiting sentence and which is credited by the  
16 sentencing court to his or her sentence pursuant to section  
17 twenty-four, article eleven, chapter sixty-one of this code or  
18 for any other reason relating to such commitment. No in-

19 mate may be granted any good time for time served either on  
20 parole or bond or in any other status whereby he or she is not  
21 physically incarcerated.

22 (d) No inmate sentenced to serve a life sentence shall be  
23 eligible to earn or receive any good time pursuant to this  
24 section.

25 (e) An inmate under two or more consecutive sentences  
26 shall be allowed good time as if the several sentences, when  
27 the maximum terms thereof are added together, were all one  
28 sentence.

29 (f) The commissioner of corrections shall promulgate sepa-  
30 rate disciplinary rules for each institution under his control in  
31 which adult felons are incarcerated, which rules shall de-  
32 scribe acts which inmates are prohibited from committing, pro-  
33 cedures for charging individual inmates for violation of such  
34 rules and for determining the guilt or innocence of inmates  
35 charged with such violations and the sanctions which may be  
36 imposed for such violations. A copy of such rules shall be  
37 given to each inmate. For each such violations, by an inmate  
38 so sanctioned, any part or all of the good time which has been  
39 granted to such inmate pursuant to this section may be for-  
40 feited and revoked by the warden or superintendent of the in-  
41 stitution in which the violation occurred. The warden or su-  
42 perintendent, when appropriate and with approval of the com-  
43 missioner, may restore any good time so forfeited.

44 (g) Each inmate, upon his or her commitment to and being  
45 received into the custody of the commissioner or the depart-  
46 ment of corrections, or upon his return to custody as the result  
47 of violation of parole pursuant to section nineteen, article  
48 twelve, chapter sixty-two of this code, shall be given a state-  
49 ment setting forth the term or length of his or her sentence or  
50 sentences and the time of his minimum discharge computed  
51 according to this section.

52 (h) Each inmate shall be given a revision of the statement  
53 described in subsection (g) if and when any part or all of the  
54 good time has been forfeited and revoked or restored pursuant  
55 to subsection (f) whereby the time of his or her earliest dis-  
56 charge is changed.

57 (i) The commissioner of corrections may, with the approval  
58 of the governor, allow extra good time for inmates who per-  
59 form exceptional work or service.

60 (j) In order to ensure equitable good time for all inmates  
61 now in the custody of the commissioner of corrections or here-  
62 after committed to the custody of such commissioner, except  
63 as to those persons committed pursuant to article four, chapter  
64 twenty-five of this code, all good times shall be computed ac-  
65 cording to this section and all previous computations of good  
66 time under prior statutes or regulations are hereby voided. All  
67 inmates who have previously forfeited good time are hereby  
68 restored to good time computed according to this section and  
69 all inmates will receive a new discharge date computed ac-  
70 cording to this section. All inmates that have been awarded  
71 overtime good time or extra good time pursuant to sections  
72 twenty-seven-a and twenty-seven-b of this article which are  
73 repealed simultaneously with the amendment to this section  
74 during the regular session of the Legislature in the year one  
75 thousand nine hundred eighty-four, shall receive such good time  
76 in addition to the good time computed according to this sec-  
77 tion.

78 (k) There shall be no grants or accumulations of good  
79 time or credit to any inmate now or hereafter serving a  
80 sentence in the custody of the department of corrections ex-  
81 cept in the manner provided in this section.

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## CHAPTER 47

(Com. Sub. for H. B. 1453—By Delegate J. Martin and Delegate Jordan)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five-b, chap-  
ter twenty-eight of the code of West Virginia, one thousand  
nine hundred thirty-one, as amended, relating generally to the  
sale of prison-made goods; prohibiting such sales; allowing  
the sale and distribution of goods designed for use by the

blind and handicapped; and allowing the sale of arts and crafts made by individual inmates on a consignment basis.

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

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

**ARTICLE 5B. PRISON-MADE GOODS.**

**§28-5B-15. Sale of prison-made goods on open market prohibited; penalty; sale of inmate-made arts and crafts permitted.**

1 (a) Subject to the provisions of subsections (b) and (c) of  
2 this section, it is unlawful to sell or offer for sale on the  
3 open market of this state any articles or products manufactured  
4 or produced wholly or in part, in this or any other state,  
5 by convicts or prisoners of this state, or any other state,  
6 except convicts or prisoners on parole or probation. Any  
7 person violating the provisions of this section is guilty of  
8 a misdemeanor, and, upon conviction, shall be punished by  
9 a fine of not less than two hundred dollars nor more than  
10 five thousand dollars, or by imprisonment in jail not less  
11 than three months nor more than one year, or by both fine  
12 and imprisonment. Each such sale or offer for sale shall  
13 constitute a separate offense under this section.

14 (b) Notwithstanding the provisions of subsection (a) of  
15 this section, any articles or products manufactured or pro-  
16 duced, wholly, or in part, by inmates of West Virginia penal  
17 and correctional institutions and facilities which are de-  
18 signed and intended to be used solely by blind and handi-  
19 capped persons, including, but not limited to, braille books  
20 and reading materials, may be sold or offered for sale or  
21 distributed on the open market of this state by the department  
22 of corrections or other state department or agency.

23 (c) Notwithstanding the provisions of subsection (a) of  
24 this section, arts and crafts produced by inmates may be  
25 sold to the general public by the department of corrections  
26 or by such other agencies or departments of state government  
27 as the commissioner of corrections may designate. The arts

28 and crafts shall be sold only on a consignment basis so that  
29 inmates whose arts and crafts products are sold shall receive  
30 payment for the products. The payments shall be deposited  
31 in such accounts or funds and managed in such a manner  
32 as provided by section six, article five of this chapter:  
33 *Provided*, That where the state department of corrections or  
34 any other agency or department of state government provides  
35 any materials used in the production of an arts and crafts  
36 product, the fair market value of such materials may be  
37 deducted from the account of the individual inmate after the  
38 sale of such product.

39 (d) For purposes of this section, "arts and crafts" means  
40 articles produced individually by artistic or craft skill such  
41 as, but not limited to, painting, sculpture, pottery and jewelry.

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## CHAPTER 48

(Com. Sub. for H. B. 1552—By Delegate J. Martin and Delegate I. Damron)

[Passed March 10, 1984; in effect January 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article seven of said chapter, all relating to compensation of county commissioners and other county officers; the equalization of compensation of all county commissioners within the same county; certain legislative findings and declarations with respect to the adjustment of such compensation; and county commissioners being excused from voting when having personal or pecuniary interest.

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

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

**Article.**

1. **County Commissions Generally.**
7. **Training Programs for County Employees, etc.; Compensation of Elected County Officials; County Assistants, Deputies and Employees, Their Number and Compensation.**

**ARTICLE 1. COUNTY COMMISSIONS GENERALLY.****§7-1-5a. Salaries of county commissioners; excusal of commissioner from voting where conflict of interest involved.**

1 All county commissioners shall be paid compensation out  
 2 of the county treasury in amounts and according to the  
 3 schedule hereafter set forth for each class of county as  
 4 determined by the provisions of section three, article seven,  
 5 chapter seven: *Provided*, That as to any county having  
 6 a tribunal in lieu of a county commission, the county com-  
 7 missioners of such county may be paid less than the minimum  
 8 compensation limits of the county commission for the partic-  
 9 ular class of such county.

10	Class I	\$20,000
11	Class II	\$15,500
12	Class III	\$14,000
13	Class IV	\$10,000
14	Class V	\$ 7,000
15	Class VI	\$ 4,200

16 The compensation hereinabove provided shall be paid on  
 17 and after January one, one thousand nine hundred eighty-  
 18 five, to each county commissioner. Within each county,  
 19 every county commissioner whose term of office commenced  
 20 prior to the first day of January, one thousand nine hundred  
 21 eighty-five, shall receive the same annual compensation as  
 22 commissioners commencing a term of office on or after that  
 23 date by virtue of the new duties imposed upon county  
 24 commissioners pursuant to the provisions of chapter fifteen,  
 25 acts of the Legislature, first extraordinary session, one thou-  
 26 sand nine hundred eighty-three.

27 Each county commissioner present during any county com-  
 28 mission meeting when any question is put, shall vote unless he  
 29 is immediately and particularly interested therein. Before such

30 question is put, any member having a direct personal or pecu-  
 31 niary interest therein should announce this fact, and request to  
 32 be excused from voting. The disqualifying interest must be  
 33 such as affects the member directly, and not as one of a class.

**ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES,  
 ETC.; COMPENSATION OF ELECTED COUNTY OFFI-  
 CIALS; COUNTY ASSISTANTS, DEPUTIES AND EM-  
 PLOYEES, THEIR NUMBER AND COMPENSATION.**

**§7-7-4. Compensation of elected county officials other than county  
 commissioners for each class of county; effective date.**

1 For the purpose of determining the compensation to be  
 2 paid to the elected county officials of each county, the  
 3 following compensations for each county office by class are  
 4 hereby established and shall be used by each county com-  
 5 mission in determining the compensation of each of their  
 6 county officials other than compensation of members of the  
 7 county commission:

		County	Circuit	Prosecuting	
	Sheriff	Clerk	Clerk	Assessor	Attorney
10 Class I	\$24,200	\$31,300	\$31,300	\$24,200	\$41,500
11 Class II	\$24,200	\$28,000	\$28,000	\$24,200	\$39,500
12 Class III	\$24,200	\$28,000	\$28,000	\$24,200	\$30,000
13 Class IV	\$22,300	\$24,000	\$24,000	\$22,300	\$26,500
14 Class V	\$20,400	\$22,000	\$22,000	\$20,400	\$23,500
15 Class VI	\$17,200	\$17,200	\$17,200	\$17,200	\$17,000

16 Any county clerk, circuit clerk, joint clerk of the county  
 17 commission and circuit court, if any, county assessor, sheriff  
 18 and prosecuting attorney of a Class I county, any assessor  
 19 of a Class II and Class III county, any sheriff of a Class II  
 20 and Class III county, and any prosecuting attorney of a Class  
 21 II county shall devote full time to his public duties to the  
 22 exclusion of any other employment: *Provided*, That any such  
 23 public official, whose term of office begins when his county's  
 24 classification imposes no restriction on his outside activities,  
 25 shall not be restricted on his outside activities during the  
 26 remainder of the term for which he is elected. The com-

27    pensation hereinabove provided shall be paid on and after  
28    the first day of January, one thousand nine hundred eighty-  
29    five, to each elected county official.

30        In the case of a county that has a joint clerk of the  
31    county commission and circuit court, the compensation of the  
32    joint clerk shall be fixed in an amount twenty-five percent  
33    higher than the compensation would be fixed for the county  
34    clerk if it had separate offices of county clerk and circuit  
35    clerk.

36        The Legislature finds, as a fact, that the duties imposed  
37    upon county clerks by the provisions of chapter sixty-four,  
38    acts of the Legislature, regular session, one thousand nine  
39    hundred eighty-two, and by chapter fifteen, acts of the  
40    Legislature, first extraordinary session, one thousand nine  
41    hundred eighty-three, constitute new and additional duties  
42    for county clerks and as such justify the additional compen-  
43    sation provided in this section without violating the provisions  
44    of section thirty-eight, article six of the constitution of West  
45    Virginia.

46        The Legislature further finds as a fact that the duties  
47    imposed upon circuit clerks by the provisions of chapters  
48    sixty-one and one hundred eighty-two, acts of the Legislature,  
49    regular session, one thousand nine hundred eighty-one, and  
50    by chapter sixty, acts of the Legislature, regular session, one  
51    thousand nine hundred eighty-three, constitute new and addi-  
52    tional duties for circuit clerks and as such justify the addi-  
53    tional compensation provided by this section without violating  
54    the provisions of section thirty-eight, article six of the con-  
55    stitution of West Virginia.

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## CHAPTER 49

(Com. Sub. for H. B. 1199—By Delegate Otte and Delegate Doyle)

[Passed March 10, 1984: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding



thereto a new article, designated article seventeen, relating to findings; definitions; county fire association creation; prohibiting a full-time paid fire department located in a municipality from entering the fire association; vesting management and control in the county fire association and providing for appointment; sale or lease of property; reversion of assets upon dissolution; county fire board creation, management, membership, terms of members and vacancies; resident requirement of county fire board members; municipality location; compensation and expenses of county fire board members; providing that board is a public corporation; powers generally; limitations; county fire service fees, petition, election and increase; dedication of fees; incurring indebtedness and rights of creditors; agreements in connection with obtaining funds; providing tax exemptions; appropriations; contributions by county commissions and municipalities; funds and accounts; reports; audits and examination of books, records and accounts; criminal penalties; providing for sale or lease of property and reversion of assets upon dissolution; providing for workers' compensation coverage; and providing for liberal construction.

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

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

**ARTICLE 17. COUNTY FIRE BOARDS.**

- §7-17-1. Findings.
- §7-17-2. Definitions.
- §7-17-3. County fire association creation; prohibiting entrance by a municipality maintaining a full time paid fire department.
- §7-17-4. Management and control vested in the county fire association; appointment.
- §7-17-5. Sale or lease of property; reversion of assets upon dissolution.
- §7-17-6. County fire board creation and management; membership; terms of members; vacancies.
- §7-17-7. Resident requirement of county fire board members; municipality location.
- §7-17-8. Compensation; expenses.
- §7-17-9. Board to be a public corporation.
- §7-17-10. Powers generally.
- §7-17-11. Limitations.
- §7-17-12. County fire service fees; petition; election; dedication; increase.

- §7-17-13. Incurring indebtedness; rights of creditors.  
§7-17-14. Agreements in connection with obtaining funds.  
§7-17-15. Property, bonds and obligations of authority exempt from taxation.  
§7-17-16. Appropriations authorized.  
§7-17-17. Contributions by county commissions, municipalities and others;  
funds and accounts; reports; audit and examination of books,  
records and accounts; and penalties.  
§7-17-18. Sale or lease of property; reversion of assets upon dissolution.  
§7-17-19. Employees to be covered by workers' compensation.  
§7-17-20. Liberal construction of article.

**§7-17-1. Findings.**

- 1 The Legislature finds that fire protection and saving lives  
2 and property are important to the health and welfare of the  
3 citizens of the state and that it is desirable for county govern-  
4 ments to provide fire protection services to county residents.

**§7-17-2. Definitions.**

- 1 As used in this article unless the context clearly indicates  
2 otherwise:

3 (1) "User" means any person to whom fire service is made  
4 available under the provisions of this article.

5 (2) "County commission" means the county commission or  
6 tribunal in lieu thereof of every county within the state of  
7 West Virginia as provided in section nine, article nine of the  
8 constitution of the state of West Virginia.

9 (3) "County fire association" means an association created  
10 in §7-17-3.

11 (4) "County fire board" means that board created in  
12 §7-17-6.

13 (5) "Fire service" means an organization that provides fire  
14 prevention and fire protection to a community, the members  
15 of such an organization or the fire fighting profession as a  
16 whole.

**§7-17-3. County fire association creation; prohibiting entrance by  
a municipality maintaining a full time paid fire de-  
partment.**

- 1 The fire departments within each county are hereby autho-

2 rized to create and establish a county fire association, here-  
3 inafter referred to as "fire association." The county fire asso-  
4 ciation is created to discuss fire protection services to address  
5 fire protection problems at the county level.

6 Upon the creation of a fire association, any full-time paid  
7 fire department located in a municipality, as defined in section  
8 nine, article fifteen, chapter eight of this code is excluded from  
9 the provisions of this article. However, this provision shall not  
10 prohibit the county commission or the fire board with the ap-  
11 proval of the county commission from contracting with any  
12 municipal fire department for fire protection services render-  
13 ed to the county.

**§7-17-4. Management and control vested in the county fire asso-  
ciation; appointment.**

1 The management and control of the fire association, its prop-  
2 erty, operations, business and affairs shall be lodged with the  
3 representatives from each state fire commission recognized fire  
4 department forming the fire association. For the purpose of  
5 forming the membership of the fire association, each fire de-  
6 partment shall appoint one representative, by a majority vote  
7 of the members of the fire department, to serve on the fire  
8 association: *Provided*, That in the event three or less fire  
9 departments form the fire association each fire department  
10 shall elect two representatives, by a majority vote of the  
11 members of each fire department, to serve on the fire asso-  
12 ciation: *Provided, however*, That in the event only one fire  
13 department forms the fire association the members of the fire  
14 department shall conduct the fire association's business. The  
15 members of the fire association shall serve for a term of three  
16 years with the initial appointments beginning on the first day  
17 of July, one thousand nine hundred eighty-four. If a member  
18 resigns or for any other reason his position terminates during  
19 his term of membership, a successor shall be elected by ma-  
20 jority vote of the members of the represented department to  
21 fill out the remainder of the vacated term. Members in office  
22 at the expiration of their respective terms shall continue to  
23 serve until their successors have been appointed and have  
24 qualified.

**§7-17-5. Sale or lease of property; reversion of assets upon dissolution.**

1 The fire association shall fix and determine the terms and  
2 conditions of any property or equipment to be leased or sold  
3 by the fire association. Upon dissolution of the fire associa-  
4 tion, all of its assets and property contributed by the county  
5 commission shall revert to and become the property of the  
6 county for which the board was created.

**§7-17-6. County fire board creation and management; membership; terms of members; vacancies.**

1 The county fire association upon two-thirds vote of its  
2 membership shall submit an application to the county commis-  
3 sion requesting that the county commission create the county  
4 fire board. Upon receipt of such application the county com-  
5 mission may by majority vote create such a fire board and if  
6 so created the county fire board, if authorized, shall be a cor-  
7 poration. The county fire board shall establish the funding  
8 priorities for the fire departments forming the fire association  
9 and shall present a list of those priorities to the county com-  
10 mission. However, no fire department or representative of a  
11 fire department who is a member of the fire board or fire as-  
12 sociation may apply for county funding from the county com-  
13 mission except as provided for in subsection seven, section ten  
14 of this article. The bylaws of the county fire board and stan-  
15 dards of operation of the fire association shall be submitted  
16 to, and approved by, the state fire commission and county  
17 commission.

18 The county fire board shall consist of seven members. The  
19 initial appointment to the county fire board shall begin on the  
20 first day of July, one thousand nine hundred eighty-four. One  
21 county commissioner, chosen by the county commission, shall  
22 serve on the board. The county commission shall make the  
23 initial appointments to the fire board so that one third of the  
24 fire association members and the citizen members to be so ap-  
25 pointed shall be appointed for a term of one year, one third of  
26 the fire association members and the citizen members shall  
27 be appointed for a term of two years and one third of the fire  
28 association members and the citizen members shall be ap-

29 pointed for a term of three years. As the term of each such  
30 initial appointee expires, the successor to fill the vacancy  
31 created by such expired term shall be appointed by the county  
32 commission for a term of three years. The county fire asso-  
33 ciation shall submit to the county commission the names of  
34 five members of the fire association, three of whom shall be  
35 appointed by the county commission to serve a term of three  
36 years. Such members are limited to two consecutive terms.  
37 Three citizen members shall be appointed by the county com-  
38 mission to serve on the board. The citizen members may not  
39 be associated with fire service or the county commission. The  
40 citizen members must be residents of the county of which the  
41 county fire board is formed and not more than one citizen  
42 member may be appointed from the same magisterial district  
43 in the county. The citizen members shall serve for a term of  
44 three years but are limited to two consecutive terms. If a  
45 member resigns or for any other reason his membership ter-  
46 minates during his term of office, a successor shall be ap-  
47 pointed from the same representative area to fill out the re-  
48 mainder of his term. Members in office at the expiration of  
49 their respective terms shall continue to serve until their suc-  
50 cessors have been appointed and have qualified.

51 Annually the board shall elect one of its appointed members  
52 as chairman and another as vice chairman, and shall appoint a  
53 secretary-treasurer. Four members of the board shall consti-  
54 tute a quorum and the affirmative vote of four members shall  
55 be necessary for any action taken by vote of the board. No  
56 vacancy in the membership of the authority shall impair the  
57 rights of a quorum by such vote to exercise all the rights and  
58 perform all duties of the board.

**§7-17-7. Resident requirement of county fire board members;  
municipality location.**

1 All members of the county fire board shall be residents  
2 of the county in which the county fire board is intended to  
3 operate. If a county boundary line divides a municipality's  
4 city limits, the area of the municipality in which the majority  
5 of the municipality's population resides determines the county  
6 in which the municipality is located for this purpose.

**§7-17-8. Compensation; expenses.**

1 No member of the board may receive any compensation in  
2 connection with his services as a member. Each member,  
3 however, is entitled to reimbursement by the county fire  
4 board for any necessary expenses actually incurred in con-  
5 nection with the performance of his duties. However, not  
6 more than one percent of the annual appropriations to the  
7 board may be used for administrative expenses by the board.

**§7-17-9. Board to be a public corporation.**

1 The county fire board shall constitute and if authorized  
2 be created as a public corporation under the name provided  
3 for in its articles of incorporation and, as such, shall have  
4 perpetual succession, may contract with and be contracted  
5 with, sue and be sued and have and use a corporate seal.

**§7-17-10. Powers generally.**

1 The county fire board may:

2 (1) Make and adopt all necessary bylaws, rules and regu-  
3 lations for its organization and operations not inconsistent  
4 with law;

5 (2) Elect its own officers, appoint committees and  
6 employ and fix compensation for personnel necessary for its  
7 operation;

8 (3) Enter into contracts with any person, agency, govern-  
9 mental department, firm or corporation, including both pub-  
10 lic and private corporations, and renew, amend or supplement  
11 such contracts;

12 (4) Generally do any and all things necessary or convenient  
13 for the purpose of improving fire service protection within the  
14 area to be served;

15 (5) Borrow money, apply for, receive and use grants-in-  
16 aid, donations and contributions from any source or sources  
17 and accept and use bequests, devises, gifts and donations from  
18 any person, firm or corporation;

19 (6) Raise funds by the issuance and sale of revenue bonds  
20 in the manner provided by law;

21 (7) Formulate and present a petition for funds to the coun-  
22 ty commission: *Provided*, That not more than one percent of  
23 such funds be used for purposes other than the prioritized  
24 needs of the member departments;

25 (8) Purchase or otherwise acquire, own, hold, sell and dis-  
26 pose of real and personal property; and

27 (9) Expend its funds in the execution of the powers and  
28 authority herein given, which expenditures, by the means  
29 authorized herein, are hereby determined and declared as a  
30 matter of legislative finding to be for a public purpose and  
31 use, in the public interest and for the general welfare of  
32 the people of West Virginia.

**§7-17-11. Limitations.**

1 County fire associations and county fire boards shall be  
2 subject to the authority of the governing body in which said  
3 association and boards are primarily located.

**§7-17-12. County fire service fees; petition; election; dedication;  
increase.**

1 Every county commission which provides fire protection  
2 services has plenary power and authority to provide by ordi-  
3 nance for the continuance or improvement of such service, to  
4 make regulations with respect thereto and to impose by ordi-  
5 nance, upon the users of such services, reasonable fire service  
6 rates, fees and charges to be collected in the manner specified  
7 in the ordinance. However, before a county commission can  
8 impose by ordinance, upon the users of such service, a reason-  
9 able fire service fee, ten percent of the qualified voters shall  
10 present a petition duly signed by them in their own handwriting  
11 and filed with the clerk of the county commission directing  
12 that the county commission impose such a fee. The county  
13 commission shall not have a lien on any property as security  
14 for payments due under the ordinance. Any ordinance enacted  
15 under the provisions of this section shall be published as a  
16 Class II legal advertisement in compliance with the provisions  
17 of article three, chapter fifty-nine of this code, and the publi-  
18 cation area for such publication shall be the county in which  
19 the county fire board is located. In the event thirty percent

20 of the qualified voters of the county by petition duly signed by  
21 them in their own handwriting and filed with the clerk of the  
22 county commission within fifteen days after the expiration of  
23 such publication protest against such ordinance as enacted or  
24 amended, the ordinance may not become effective until it is  
25 ratified by a majority of the legal votes cast thereon by the  
26 qualified voters of such county at any primary, general or  
27 special election as the county commission directs. Voting  
28 thereon may not take place until after notice of the submission  
29 has been given by publication as above provided for the publi-  
30 cation of the ordinance after it is adopted. The powers and  
31 authority hereby granted to county commissions are in addi-  
32 tion to and supplemental to the powers and authority otherwise  
33 granted to them by other provisions of this code.

34 Any fees imposed under this article are dedicated to the  
35 county fire board for the purposes provided in this article.

36 In the event the county fire board determines an increase in  
37 any such fee imposed by this section is necessary, it shall by  
38 resolution request the county commission for such an increase.  
39 Procedures set forth in this section for the initial levy of such  
40 a fee shall be followed by the county commission in the event  
41 an increase is sought.

**§7-17-13. Incurring indebtedness; rights of creditors.**

1 The county fire board may incur any proper indebtedness  
2 and issue any obligations and give any security therefor which  
3 it considers necessary or advisable in connection with carrying  
4 out its purposes as hereinbefore mentioned. No statutory limi-  
5 tation with respect to the nature, or amount, interest rate or  
6 duration of indebtedness which may be incurred by munici-  
7 palities or other public bodies applies to indebtedness of the  
8 county fire board.

9 No indebtedness or obligation incurred by the board shall  
10 give any right against any member of the governing body  
11 of any participating government or any member of the board.  
12 Any obligation or indebtedness of any nature of the board  
13 shall never constitute an obligation or indebtedness of any  
14 participating government or the governing body of any partic-



15 ipating government, within the meaning of any constitutional  
16 provision or statutory limitation and shall never constitute or  
17 give rise to a pecuniary liability of any participating govern-  
18 ment or the governing body of any participating government  
19 or be a charge against the general credit or taxing power of  
20 any participating government or the governing body of any  
21 participating government. The rights of creditors of the board  
22 shall be solely against the board as a corporate body and  
23 shall be satisfied only out of revenues, moneys or property  
24 received or held by it in its corporate capacity.

**§7-17-14. Agreements in connection with obtaining funds.**

1 The county fire board may, in connection with obtaining  
2 funds for its purposes, enter into any agreement with any  
3 person, firm or corporation, including the federal government;  
4 or any agency or subdivision thereof, containing provisions,  
5 covenants, terms and conditions as the county fire board con-  
6 siders advisable.

**§7-17-15. Property, bonds and obligations of authority exempt from taxation.**

1 The county fire board is exempt from the payment of any  
2 taxes or fees to the state or any subdivision thereof or to  
3 any officer or employee of the state or other subdivision there-  
4 of. The property of the county fire board is exempt from all  
5 local and municipal taxes. Bonds, notes, debentures and other  
6 evidence of indebtedness of the county fire board are declared  
7 to be issued for a public purpose and to be public instrumen-  
8 talities and are exempt from taxes.

**§7-17-16. Appropriations authorized.**

1 The county commission and any municipality therein, or  
2 any one or more of them, jointly and severally, may contrib-  
3 ute by appropriation from any funds available, to the cost  
4 of the operation and projects of the county fire board.

**§7-17-17. Contributions by county commissions, municipalities and others; funds and accounts; reports; audit and examination of books, records and accounts; and penalties.**

1 Contributions may be made to the county fire board from

2 time to time by the county commission of the county or any  
3 municipal corporation therein, and by any persons, firms or  
4 corporations which desire to do so. All such funds and all  
5 other funds received by the county fire board shall be de-  
6 posited in such bank or banks as the county fire board may  
7 direct and shall be withdrawn therefrom in such manner as  
8 the county fire board may direct. The county fire board shall  
9 keep strict account of all its receipts and expenditures and  
10 shall each quarter make a quarterly report to the county com-  
11 mission and municipalities containing an itemized statement  
12 of its receipts and disbursements during the preceding quarter.  
13 Within sixty days after the end of each fiscal year, the county  
14 fire board shall make an annual report containing an itemized  
15 statement of its receipts and disbursements for the preceding  
16 fiscal year. The annual report shall be published as a Class I  
17 legal advertisement in compliance with the provisions of article  
18 three, chapter fifty-nine of this code, and the publication area  
19 for such publication shall be the county in which the county  
20 fire board is located. The books, records and accounts of the  
21 board are subject to audit and examination by the office of  
22 the state tax commissioner of West Virginia and by any other  
23 proper public official or body in the manner provided by  
24 law. For failure to comply with the provisions of this section  
25 the county fire board shall be fined not less than ten nor more  
26 than twenty-five dollars.

**§7-17-18. Sale or lease of property; reversion of assets upon dis-  
solution.**

1 The county fire board shall fix and determine the terms  
2 and conditions of any property or equipment to be leased or  
3 sold by the county fire board. Upon the dissolution of the  
4 county fire board, all of its assets and property shall revert  
5 to and become the property of the county for which the board  
6 was created.

**§7-17-19. Employees to be covered by workers' compensation.**

1 All employees of the county fire board eligible thereto  
2 are considered to be within the Workers' Compensation Act of  
3 West Virginia, and premiums on their compensation shall be  
4 paid by the county fire board as required by law.

**§7-17-20. Liberal construction of article.**

1 It is the purpose of this article to provide for the improve-  
2 ment, development and advancement of fire protection ser-  
3 vices within the counties and this article shall be liberally  
4 construed as giving to the county fire board full and complete  
5 power reasonably required to give effect to the purposes here-  
6 of.

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**CHAPTER 50**

(Com. Sub. for S. B. 412—By Mr. McGraw, Mr. President, and Senator Loehr)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section ten-a, article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirteen, article two of said chapter, relating to salaries of justices of the supreme court of appeals and judges of circuit courts.

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

That section ten-a, article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section thirteen, article two of said chapter be amended and reenacted to read as follows:

**Article.**

1. Supreme Court of Appeals.
2. Circuit Courts and Circuit Judges.

**ARTICLE 1. SUPREME COURT OF APPEALS.****§51-1-10a. Salary of justices.**

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

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

- 1 The salaries of the judges of the various circuit courts

2 shall be paid solely out of the state treasury. No county,  
3 county commission, board of commissioners or other  
4 political subdivision shall supplement or add to such  
5 salaries.

6 The annual salary of all circuit judges shall be fifty  
7 thousand dollars per year.

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## CHAPTER 51

(S. B. 372—By Senator Tucker and Senator Spears)

[Passed February 28, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one-h and one-bb, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the terms of court in the eighth and twenty-eighth circuits; changing the dates upon which such terms of court begin; and reducing the number of such terms of court.

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

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

### **ARTICLE 2. CIRCUIT COURTS AND CIRCUIT JUDGES.**

§51-2-1h. Eighth circuit.

§51-2-1bb. Twenty-eighth circuit.

#### **§51-2-1h. Eighth circuit.**

1 For the county of McDowell, on the third Monday in  
2 February, June and October.

#### **§51-2-1bb. Twenty-eighth circuit.**

1 For the county of Nicholas, on the second Tuesday in  
2 January, May and September.

## CHAPTER 52

(Com. Sub. for H. B. 1075—By Delegate Kidd)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fourteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a; and to amend article two, chapter sixty-one of said code, by adding thereto a new section, designated section ten-a, all relating to crimes against the elderly; directing the commission on aging and the department of public safety to prepare plans for the development, implementation and operation of programs designed to prevent crimes against the elderly and to reduce the fear of crime in the elderly; providing that upon conviction and sentence for the offense of assault upon a person sixty-five years of age or older during the commission of or attempt to commit a felony, the offenses of malicious or unlawful wounding upon a person sixty-five years of age or older, the offense of assault upon a person sixty-five years of age or older, or the offense of battery upon a person sixty-five years of age or older, the sentences provided for, upon conviction, shall not be subject to suspension or probation; and exceptions.

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

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

### Chapter

- 29. Miscellaneous Boards and Officers.
- 61. Crimes and Their Punishment.

### CHAPTER 29.

#### MISCELLANEOUS BOARDS AND OFFICERS.

#### ARTICLE 14. STATE COMMISSION ON AGING.

##### §29-14-9a. Prevention of crimes against the elderly.

- 1 (a) It is the express intent of the Legislature that all

2 state agencies cooperate with the state commission on aging  
3 and the department of public safety in carrying out the  
4 provisions of this section.

5 (b) The commission on aging shall, within existing ap-  
6 propriations, prepare yearly plans for the years one thousand  
7 nine hundred eighty-five through one thousand nine hundred  
8 eighty-nine, and a comprehensive five-year plan for that period,  
9 for the development, implementation and operation of pro-  
10 grams designed to prevent crime against the elderly and to  
11 reduce the fear of crime in the elderly. The commission shall  
12 identify, through research and through monitoring and evalua-  
13 tion of programs and projects conducted outside the com-  
14 mission, any social, economic or educational methods, tech-  
15 niques or procedures which have the potential effectively to  
16 prevent crime against the elderly and reduce fear of crime  
17 in the elderly. The commission shall determine the costs and  
18 benefits that would be associated with such prevention and  
19 reduction efforts and shall develop or recommend the imple-  
20 mentation of, those methods, techniques and procedures which  
21 are found likely to be cost efficient. The commission shall  
22 identify funding needs for such programs.

23 (c) In planning and developing programs and recom-  
24 mendations relating to the prevention of crime against elderly  
25 persons and reduction of fear of crime in elderly persons,  
26 the commission shall, within existing appropriations, consider  
27 and evaluate the potential for new or improved programs in,  
28 but not limited to, the following areas:

29 (1) Public education and awareness;

30 (2) Community coordination in areas of social services  
31 and criminal justice;

32 (3) Use of the elderly as a resource in community crime  
33 prevention and the voluntary involvement of elderly persons  
34 and retired professionals in the criminal justice system itself  
35 in order to improve the responsiveness and effectiveness of  
36 the existing system;

37 (4) Victim and witness assistance;

38 (5) Reduction of the economic and physical consequences  
39 of crime against the elderly; and

40 (6) Reduction of isolation of the elderly in the community.

41 (d) Other agencies of state government shall cooperate  
42 with and assist the commission, within their available resources,  
43 in gathering statistical data and in implementing programs  
44 which have the potential to prevent crime against elderly  
45 persons and to reduce the fear of crime in elderly persons  
46 and shall consider the findings and recommendations of the  
47 commission in developing and implementing agency programs  
48 and formulating agency budget requests. The department of  
49 public safety shall participate in the preparation and imple-  
50 mentation of the plans required by this section, and shall  
51 collect statistical data on the characteristics of elderly victims  
52 of crimes.

53 (e) The commission shall submit to the governor for  
54 transmittal to the president of the senate and the speaker  
55 of the house of delegates the first yearly plan to prevent  
56 crime against the elderly and to reduce the fear of crime  
57 in the elderly not later than the first day of January, one thou-  
58 sand nine hundred eighty-five, and such plan shall be up-  
59 dated and resubmitted not later than the first day of January  
60 of each calendar year thereafter through the year one thousand  
61 nine hundred eighty-nine. The plan shall outline commission  
62 proposals for the identification of appropriate prevention  
63 and reduction efforts and the development of prevention and  
64 reduction programs and the provisions for services under  
65 such programs. The yearly plan shall contain, but not be  
66 limited to, the following elements:

67 (1) A compilation of and analysis of statistical data on  
68 types of crimes committed against the elderly in this state  
69 and the incidence of such crime. Included in this shall be an  
70 identification of the areas of the state where crime against the  
71 elderly is of significant proportions. Such data should also  
72 reflect an assessment of the degree of unreported, as well as  
73 officially reported, criminal acts.

74 (2) An identification and projection of the potential popu-  
75 lation for which prevention programs should be considered.

76 (3) An inventory and evaluation of existing prevention  
77 and reduction programs, facilities and services in the state  
78 or nationally, including population served, cost of services  
79 provided, percentage of unmet needs and an identification  
80 of any needed program improvement or change.

81 (4) A listing of potential prevention efforts identified  
82 by the commission, the estimated annual cost of providing  
83 such prevention services for the anticipated target popula-  
84 tion, an identification of potential funding sources and the  
85 projected benefits of providing such services.

86 (f) The yearly plans shall be compiled and analyzed by  
87 the commission in the five-year comprehensive plan, which  
88 shall be submitted to the governor for transmittal to the  
89 president of the senate and speaker of the house of delegates  
90 with the last yearly plan on or before the first day of January,  
91 one thousand nine hundred eighty-nine.

92 (g) All funding sources, including reallocated LEAA  
93 funds, shall be considered by the commission for implementing  
94 programs and projects for crimes against the elderly.

## CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

### ARTICLE 2. CRIMES AGAINST THE PERSON.

#### §61-2-10a. Violent crimes against the elderly; sentence not subject to suspension or probation.

1 (a) If any person be convicted and sentenced for an offense  
2 defined under the provisions of section nine or ten of this  
3 article, and if the person shall have committed such offense  
4 against a person who is sixty-five years of age or older, then  
5 the sentence shall be mandatory and shall not be subject to  
6 suspension or probation: *Provided*, That the court may, in its  
7 discretion, suspend the sentence and order probation to any  
8 person so convicted upon condition that such person perform  
9 public service for a period of time deemed appropriate by the  
10 court, which service shall be rendered in or about facilities or  
11 programs providing care or services for the elderly: *Provided*,  
12 *however*, That the court may apply the provisions of article



13 eleven-a, chapter sixty-two of this code to a person committed  
14 to a term of one year or less.

15 (b) The existence of any fact which would make any per-  
16 son ineligible for probation under subsection (a) of this sec-  
17 tion because of the commission or attempted commission of a  
18 felony against a victim sixty-five years of age or older shall not  
19 be applicable unless such fact is (i) found by the court upon  
20 a plea of guilty or nolo contendere, or (ii) found by the jury,  
21 if the matter is tried before a jury or (iii) found by the court,  
22 if the matter is tried by the court, without a jury.

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## CHAPTER 53

(Com. Sub. for S. B. 102—By Senator Boettner and Senator Ash)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fourteen and fourteen-d, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fourteen-e, all relating to the crimes of child stealing and the abduction of certain persons generally; the abduction of persons for purposes of marriage or defilement; the abduction of children for purposes of prostitution or concubinage; the abduction of children for other unlawful, improper or immoral purposes; the concealment or removal of minor child from its custodian or from a person entitled to visitation; commission of such crime in another state; setting forth defenses; aider or abettor in commission of certain crimes guilty as a principal; venue; and providing criminal penalties for such crimes.

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

That sections fourteen and fourteen-d, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article two be further amended by adding thereto

a new section, designated section fourteen-e, all to read as follows:

**ARTICLE 2. CRIMES AGAINST THE PERSON.**

§61-2-14. Abduction of person; kidnapping or concealing child; penalties.

§61-2-14d. Concealment or removal of minor child from custodian or from person entitled to visitation; penalties; defenses.

§61-2-14e. One aiding or abetting in offense under §61-2-14, §61-2-14a, §61-2-14c or §61-2-14d as principal; venue.

**§61-2-14. Abduction of person; kidnapping or concealing child; penalties.**

1 (a) Any person who takes away another person, or  
2 detains another person against such person's will, with  
3 intent to marry or defile the person, or to cause the person  
4 to be married or defiled by another person; or takes away  
5 a child under the age of sixteen years from any person  
6 having lawful charge of such child, for the purpose of  
7 prostitution or concubinage, shall be guilty of a felony,  
8 and, upon conviction thereof, shall be confined in the peni-  
9 tentiary not less than three nor more than ten years.

10 (b) Any person, other than the father or mother, who  
11 illegally, or for any unlawful, improper or immoral pur-  
12 pose other than the purposes stated in subsection (a) of  
13 this section or section fourteen-a or fourteen-c of this  
14 article, seizes, takes or secretes a child under sixteen years  
15 of age, from the person or persons having lawful charge  
16 of such child, shall be guilty of a felony, and, upon con-  
17 viction thereof, shall be confined in the penitentiary not  
18 less than one nor more than ten years.

**§61-2-14d. Concealment or removal of minor child from cus-  
todian or from person entitled to visitation; penal-  
ties; defenses.**

1 (a) Any person who conceals, takes or removes a minor  
2 child in violation of any court order and with the intent  
3 to deprive another person of lawful custody or visitation  
4 rights shall be guilty of a felony, and, upon conviction  
5 thereof, shall be imprisoned in the penitentiary not less  
6 than one nor more than five years, or in the discretion of  
7 the court, shall be imprisoned in the county jail not more  
8 than one year or fined not more than one thousand dol-  
9 lars, or both fined and imprisoned.

10 (b) Any person who violates this section and in so  
11 doing removes the minor child from this state or conceals  
12 the minor child in another state shall be guilty of a felony,  
13 and, upon conviction thereof, shall be imprisoned in the  
14 penitentiary not less than one nor more than five years  
15 or fined not more than one thousand dollars, or both fined  
16 and imprisoned.

17 (c) It shall be a defense under this section that the  
18 accused reasonably believed such action was necessary to  
19 preserve the welfare of the minor child. The mere failure  
20 to return a minor child at the expiration of any lawful  
21 custody or visitation period without the intent to deprive  
22 another person of lawful custody or visitation rights shall  
23 not constitute an offense under this section.

**§61-2-14e. One aiding or abetting in offense under §61-2-14,  
§61-2-14a, §61-2-14c or §61-2-14d guilty as principal;  
venue.**

1 If any person in any way knowingly aid or abet any  
2 other person in the commission of any offense described  
3 in section fourteen, fourteen-a, fourteen-c or fourteen-d  
4 of this article, either as accessory before or an accessory  
5 after the fact, such person so aiding and abetting shall be  
6 guilty as a principal in the commission of such offense  
7 and shall be punished in the same manner and to the  
8 same extent as is provided in said sections for the person  
9 who committed the offense. The venue of any offense  
10 committed in violation of the provisions of this section  
11 shall be as provided in section seven, article eleven of this  
12 chapter.

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## CHAPTER 54

(Com. Sub. for S. B. 401—By Senator Boettner and Senator Nelson)

[Passed March 5, 1984: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-two, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to retaining

possession of or removing personal property which is security for a claim without consent and with intent to defraud and providing criminal penalties; disposal, secreting or conversion of personal property subject to written lease without consent and with intent to defraud made a crime of larceny; providing for written notice; failure to return property within ten days of receipt of notice; prima facie evidence of intent to defraud; right of the lessor to immediate possession after expiration of the lease and written notice; and lessor not liable for certain damages incidental to reclaiming or taking possession of the leased property.

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

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

**ARTICLE 3. CRIMES AGAINST PROPERTY.**

**§61-3-32. Removal out of county of property securing claim; penalties; fraudulent disposition of personal property in possession by virtue of lease; notice to return; failure to return; penalty; right to immediate possession.**

1 (a) Any debtor under any security instrument conveying  
 2 personal property, who retains possession of such personal  
 3 property, and who, without the consent of the owner of the  
 4 claim secured by such security instrument, and with intent  
 5 to defraud, removes or causes to be removed any of the  
 6 property securing such claim out of the county where it is  
 7 situated at the time it became security for such claim or out  
 8 of a county to which it was removed by virtue of a former  
 9 consent of the owner of the claim under this section, or, with  
 10 intent to defraud, secretes or sells the same, or converts the  
 11 same to his own use, shall be guilty of a misdemeanor, and,  
 12 upon conviction, be fined not more than five hundred  
 13 dollars, or imprisoned not more than six months, or both, in  
 14 the discretion of the court.

15 (b) Any person in possession or control of any personal  
 16 property by virtue of or subject to a written lease who, with

17 intent to defraud and without written consent of the owner,  
18 disposes of such property by sale or transfer, or secretes or  
19 converts such property to his own use, or removes or causes  
20 to be removed such property from the state shall be deemed  
21 guilty of the larceny of such property.

22 In any prosecution under the provisions of this  
23 subsection, written notice may be mailed by certified mail,  
24 addressed to the lessee at the address of the lessee stated in  
25 the lease, and served on the lessee within ten days of the  
26 expiration of the lease, which notice shall state that the  
27 lease has expired and that lessee has ten days from receipt  
28 of such notice to return the leased property. Proof that the  
29 lessee failed to return the property within ten days of  
30 receiving such notice shall in any prosecution under this  
31 subsection constitute prima facie evidence that the lessee  
32 intended to defraud the owner.

33 Whenever the lessee is a resident of the county in which  
34 the lease was contracted, the lessor, after written notice to  
35 the lessee within ten days after the expiration of the lease,  
36 has the right to immediate possession of the leased  
37 property, without formal process to secure return and  
38 possession of the leased property, if this can be done  
39 without breach of the peace. The lessor is not liable to the  
40 lessee for any damages for any action taken that is  
41 reasonable, necessary and incidental to the reclaiming or  
42 taking possession of the leased property.

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## CHAPTER 55

(Com. Sub. for H. B. 1507—By Delegate Chambers and Delegate I. Damron)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-nine-1, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crimes against property; requiring checks on consumer deposit accounts to show when the accounts were opened; setting forth the method by which such information shall be placed on these checks.

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

That section thirty-nine-1, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. CRIMES AGAINST PROPERTY.**

**§61-3-391. Checks on consumer deposit accounts to show date account was opened; consumer deposit account defined.**

1 (a) Beginning on the first day of July, one thousand nine  
2 hundred eighty-four, all checks, drafts or similar negotiable  
3 or nonnegotiable instruments or orders of withdrawal which  
4 are thereafter printed to be used for drawing against funds  
5 held in a consumer deposit account by a supervised financial  
6 organization located in the state of West Virginia shall have  
7 clearly printed on the face thereof a four or five-digit com-  
8 bination of numbers and letters as follows:

9 (1) In the case of a consumer deposit account which  
10 has been open for less than one year, a five-digit combina-  
11 tion. The first two digits, running from 01 through 12, shall  
12 numerically identify the month the account was opened,  
13 followed by a hyphen, and the fourth and fifth digits shall  
14 be the last two numbers of the year in which the account  
15 was opened.

16 (2) In the case of a consumer deposit account which has  
17 been open for one year or more, a four-digit combination  
18 which shall be "1 Yr. +": *Provided*, That a new account  
19 or an account which has been open for less than one year  
20 may be treated as an account which has been open for one  
21 year or more when a person authorized to draw against funds  
22 in the account shall demonstrate to the supervised financial  
23 organization through the production of account statements  
24 that he has had a demand or other similar deposit account  
25 or share account at the same or another financial institution  
26 for twelve months immediately preceding his request for  
27 printed checks.

28 (b) For purposes of this section the term "consumer  
29 deposit account" means a demand or other similar deposit

30 account or share account established and maintained by a  
31 natural person with a supervised financial organization and  
32 operated primarily for personal, family or household pur-  
33 poses. The term "supervised financial organization" shall  
34 have the same meaning as is ascribed to such term in section  
35 one hundred two, article one, chapter forty-six-a of this code.

36 (c) The commissioner of banking is authorized and em-  
37 powered to order any supervised financial institution to  
38 comply with the provisions of this section and may apply to  
39 any state or federal court of competent jurisdiction for  
40 appropriate orders, writs, processes and remedies in aid of  
41 enforcement.

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## CHAPTER 56

(H. B. 2032—By Delegate Davis and Delegate Casey)

[Passed March 9, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to repeal section thirteen, article eight-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve, article eight of said chapter sixty-one; and to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve of said article eight-b, all relating to sex offenses generally; defining certain terms relating to the offense of incest; defining the felony offense of incest and establishing the penalty therefor; defining certain terms relating to the offenses of sexual assault, sexual abuse, sexual assault of a spouse and indecent exposure; providing that lack of consent is an element of every offense defined in article eight-b, chapter sixty-one of said code and delineating when lack of consent results or when a person is deemed incapable of consent; defining the felony offense of sexual assault in the first degree and establishing the penalty therefor; defining the felony offense of sexual assault in the second degree and establishing the penalty therefor; defining the felony offense of sexual assault in the third degree and establishing the penalty therefor; defining the felony

offense of sexual assault of a spouse and establishing the penalty therefor; defining the felony offense of sexual abuse in the first degree and establishing the penalty therefor; defining the misdemeanor offense of sexual abuse in the second degree and establishing the penalty therefor; defining the misdemeanor offense of sexual abuse in the third degree and establishing the penalty therefor; defining the misdemeanor offense of indecent exposure and establishing the penalty therefor; restricting the admissibility of certain types of evidence upon the trial of a person for offenses defined under the provisions of said article eight-b; providing that neither age nor mental capacity of the victim shall preclude the victim from testifying; and providing an affirmative defense for certain offenses charged under the provisions of said article eight-b.

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

That section thirteen, article eight-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section twelve, article eight of said chapter sixty-one be amended and reenacted; and that sections one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve of said article eight-b be amended and reenacted, all to read as follows:

**Article.**

**8. Crimes against chastity, morality and decency.**

**8B. Sexual Offenses.**

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.**

**§61-8-12. Incest; penalty.**

1 (a) For the purposes of this section:

2 (1) "Aunt" means the sister of a person's mother or father;

3 (2) "Brother" means the son of a person's mother or  
4 father;

5 (3) "Daughter" means a person's natural daughter, adop-  
6 tive daughter or the daughter of a person's husband or wife;

7 (4) "Father" means a person's natural father, adoptive  
8 father or the husband of a person's mother;



- 9 (5) "Granddaughter" means the daughter of a person's son  
10 or daughter;
- 11 (6) "Grandfather" means the father of a person's father or  
12 mother;
- 13 (7) "Grandmother" means the mother of a person's father  
14 or mother;
- 15 (8) "Grandson" means the son of a person's son or daugh-  
16 ter;
- 17 (9) "Mother" means a person's natural mother, adoptive  
18 mother or the wife of a person's father;
- 19 (10) "Niece" means the daughter of a person's brother or  
20 sister;
- 21 (11) "Nephew" means the son of a person's brother or  
22 sister;
- 23 (12) "Sexual intercourse" means any act between persons  
24 involving penetration, however slight, of the female sex organ  
25 by the male sex organ or involving contact between the sex  
26 organs of one person and the mouth or anus of another person;
- 27 (13) "Sexual intrusion" means any act between persons in-  
28 volving penetration, however slight, of the female sex organ or  
29 of the anus of any person by an object for the purpose of de-  
30 grading or humiliating the person so penetrated or for gratify-  
31 ing the sexual desire of either party;
- 32 (14) "Sister" means the daughter of a person's father or  
33 mother;
- 34 (15) "Son" means a person's natural son, adoptive son or  
35 the son of a person's husband or wife;
- 36 (16) "Uncle" means the brother of a person's father or  
37 mother.
- 38 (b) A person is guilty of incest when such person engages  
39 in sexual intercourse or sexual intrusion with his or her father,  
40 mother, brother, sister, daughter, son, grandfather, grand-  
41 mother, grandson, granddaughter, nephew, niece, uncle or  
42 aunt.

43 (c) Any person who violates the provisions of this section  
44 shall be guilty of a felony, and, upon conviction thereof, shall  
45 be imprisoned in the penitentiary not less than five years nor  
46 more than ten years, or fined not more than five thousand  
47 dollars and imprisoned in the penitentiary not less than five  
48 years nor more than ten years.

#### ARTICLE 8B. SEXUAL OFFENSES.

- §61-8B-1. Definitions of terms.
- §61-8B-2. Lack of consent.
- §61-8B-3. Sexual assault in the first degree.
- §61-8B-4. Sexual assault in the second degree.
- §61-8B-5. Sexual assault in the third degree.
- §61-8B-6. Sexual assault of a spouse.
- §61-8B-7. Sexual abuse in the first degree.
- §61-8B-8. Sexual abuse in the second degree.
- §61-8B-9. Sexual abuse in the third degree.
- §61-8B-10. Indecent exposure.
- §61-8B-11. Sexual offenses—Evidence.
- §61-8B-12. Same—Defense.

##### §61-8B-1. Definition of terms.

1 In this article, unless a different meaning plainly is re-  
2 quired:

3 (1) "Forcible compulsion" means:

4 (a) Physical force that overcomes such earnest resistance  
5 as might reasonably be expected under the circumstances; or

6 (b) Threat or intimidation, expressed or implied, placing a  
7 person in fear of immediate death or bodily injury to himself  
8 or another person or in fear that he or another person will  
9 be kidnapped.

10 For the purposes of this definition "resistance" includes  
11 physical resistance or any clear communication of the victim's  
12 lack of consent.

13 (2) "Married," for the purposes of this article in addition  
14 to its legal meaning, includes persons living together as man  
15 and wife regardless of the legal status of their relationship.

16 (3) "Mentally defective" means that a person suffers from  
17 a mental disease or defect which renders such person incap-  
18 able of appraising the nature of his conduct.

19 (4) "Mentally incapacitated" means that a person is rendered  
20 temporarily incapable of appraising or controlling his or her  
21 conduct as a result of the influence of a controlled or intoxicat-  
22 ing substance administered to such person without his or her  
23 consent or as a result of any other act committed upon such  
24 person without his or her consent.

25 (5) "Physically helpless" means that a person is uncon-  
26 scious or for any reason is physically unable to communicate  
27 unwillingness to an act.

28 (6) "Sexual contact" means any intentional touching, either  
29 directly or through clothing, of the anus or any part of the  
30 sex organs of another person, or the breasts of a female eleven  
31 years old or older, where the victim is not married to the actor  
32 and the touching is done for the purpose of gratifying the  
33 sexual desire of either party.

34 (7) "Sexual intercourse" means any act between persons not  
35 married to each other involving penetration, however slight,  
36 of the female sex organ by the male sex organ or involving  
37 contact between the sex organs of one person and the mouth  
38 or anus of another person.

39 (8) "Sexual intrusion" means any act between persons not  
40 married to each other involving penetration, however slight,  
41 of the female sex organ or of the anus of any person by an  
42 object for the purpose of degrading or humiliating the person  
43 so penetrated or for gratifying the sexual desire of either party.

44 (9) "Bodily injury" means substantial physical pain, illness  
45 or any impairment of physical condition.

46 (10) "Serious bodily injury" means bodily injury which  
47 creates a substantial risk of death, which causes serious or pro-  
48 longed disfigurement, prolonged impairment of health or pro-  
49 longed loss or impairment of the function of any bodily organ.

50 (11) "Deadly weapon" means any instrument, device or  
51 thing capable of inflicting death or serious bodily injury, and  
52 designed or specially adapted for use as a weapon, or possessed,  
53 carried or used as a weapon.

**§61-8B-2. Lack of consent.**

1 (a) Whether or not specifically stated, it is an element of  
2 every offense defined in this article that the sexual act was  
3 committed without the consent of the victim.

4 (b) Lack of consent results from:

5 (1) Forcible compulsion; or

6 (2) Incapacity to consent; or

7 (3) If the offense charged is sexual abuse, any circumstances  
8 in addition to the forcible compulsion or incapacity to consent  
9 in which the victim does not expressly or impliedly acquiesce  
10 in the actor's conduct.

11 (c) A person is deemed incapable of consent when such  
12 person is:

13 (1) Less than sixteen years old; or

14 (2) Mentally defective; or

15 (3) Mentally incapacitated; or

16 (4) Physically helpless.

**§61-8B-3. Sexual assault in the first degree.**

1 (a) A person is guilty of sexual assault in the first degree  
2 when:

3 (1) Such person engages in sexual intercourse or sexual in-  
4 trusion with another person and, in so doing:

5 (i) Inflicts serious bodily injury upon anyone; or

6 (ii) Employs a deadly weapon in the commission of the  
7 act; or

8 (2) Such person, being fourteen years old or more, en-  
9 gages in sexual intercourse or sexual intrusion with another  
10 person who is eleven years old or less.

11 (b) Any person who violates the provisions of this section  
12 shall be guilty of a felony, and, upon conviction thereof, shall  
13 be imprisoned in the penitentiary not less than fifteen nor  
14 more than twenty-five years, or fined not more than ten thou-

15 sand dollars and imprisoned in the penitentiary not less than  
16 fifteen nor more than twenty-five years.

**§61-8B-4. Sexual assault in the second degree.**

1 (a) A person is guilty of sexual assault in the second de-  
2 gree when:

3 (1) Such person engages in sexual intercourse or sexual  
4 intrusion with another person without the person's consent,  
5 and the lack of consent results from forcible compulsion; or

6 (2) Such person engages in sexual intercourse or sexual in-  
7 trusion with another person who is physically helpless.

8 (b) Any person who violates the provisions of this section  
9 shall be guilty of a felony, and, upon conviction thereof, shall  
10 be imprisoned in the penitentiary not less than ten nor more  
11 than twenty years, or fined not more than ten thousand dol-  
12 lars and imprisoned in the penitentiary not less than ten nor  
13 more than twenty years.

**§61-8B-5. Sexual assault in the third degree.**

1 (a) A person is guilty of sexual assault in the third degree  
2 when:

3 (1) Such person engages in sexual intercourse or sexual  
4 intrusion with another person who is mentally defective or  
5 mentally incapacitated; or

6 (2) Such person, being sixteen years old or more, engages  
7 in sexual intercourse or sexual intrusion with another person  
8 who is less than sixteen years old and who is at least four  
9 years younger than the defendant.

10 (b) Any person who violates the provisions of this section  
11 shall be guilty of a felony, and, upon conviction thereof, shall  
12 be imprisoned in the penitentiary not less than one year nor  
13 more than five years, or fined not more than ten thousand  
14 dollars and imprisoned in the penitentiary not less than one  
15 year nor more than five years.

**§61-8B-6. Sexual assault of a spouse.**

1 (a) For the purposes of this subsection:

2 (1) "Sexual intercourse" means any act between persons  
3 married to each other involving penetration, however slight, of  
4 the female sex organ by the male sex organ or involving con-  
5 tact between the sex organs of one person and the mouth or  
6 anus of his or her spouse.

7 (2) "Sexual intrusion" means any act between persons mar-  
8 ried to each other involving penetration of the female sex  
9 organ or of the anus of either person by an object for the  
10 purpose of degrading or humiliating the person so penetrated or  
11 for gratifying the sexual desire of either party.

12 (b) A person is guilty of sexual assault of a spouse when  
13 such person engages in sexual penetration or sexual intrusion  
14 with his or her spouse without the consent of such spouse;  
15 and

16 (i) The lack of consent results from forcible compulsion; or

17 (ii) Such person inflicts serious bodily injury upon anyone;  
18 or

19 (iii) Such person employs a deadly weapon in the com-  
20 mission of the offense.

21 (c) Any person who violates the provisions of this section  
22 shall be guilty of a felony, and, upon conviction thereof, shall  
23 be confined in the penitentiary not less than two nor more  
24 than ten years, or fined not more than five thousand dollars  
25 and confined in the penitentiary not less than two nor more  
26 than ten years.

**§61-8B-7. Sexual abuse in the first degree.**

1 (a) A person is guilty of sexual abuse in the first degree  
2 when:

3 (1) Such person subjects another person to sexual contact  
4 without their consent, and the lack of consent results from  
5 forcible compulsion; or

6 (2) Such person subjects another person to sexual con-  
7 tact who is physically helpless; or

8 (3) Such person, being fourteen years old or more, sub-

9 jects another person to sexual contact who is eleven years old  
10 or less.

11 (b) Any person who violates the provisions of this sec-  
12 tion shall be guilty of a felony, and, upon conviction thereof,  
13 shall be imprisoned in the penitentiary not less than one  
14 year nor more than five years, or fined not more than ten  
15 thousand dollars and imprisoned in the penitentiary not less  
16 than one year nor more than five years.

**§61-8B-8. Sexual abuse in the second degree.**

1 (a) A person is guilty of sexual abuse in the second  
2 degree when such person subjects another person to sexual  
3 contact who is mentally defective or mentally incapacitated.

4 (b) Any person who violates the provisions of this section  
5 shall be guilty of a misdemeanor, and, upon conviction  
6 thereof, shall be confined in the county jail not more than  
7 twelve months, or fined not more than five hundred dol-  
8 lars and confined in the county jail not more than twelve  
9 months.

**§61-8B-9. Sexual abuse in the third degree.**

1 (a) A person is guilty of sexual abuse in the third degree  
2 when he subjects another person to sexual contact without the  
3 latter's consent, when such lack of consent is due to the victim's  
4 incapacity to consent by reason of being less than sixteen years  
5 old.

6 (b) In any prosecution under this section it is a de-  
7 fense that:

8 (1) The defendant was less than sixteen years old; or

9 (2) The defendant was less than four years older than  
10 the victim.

11 (c) Any person who violates the provisions of this section  
12 shall be guilty of a misdemeanor, and, upon conviction there-  
13 of, shall be confined in the county jail not more than ninety  
14 days, or fined not more than five hundred dollars and con-  
15 fined in the county jail not more than ninety days.

**§61-8B-10. Indecent exposure.**

1 (a) A person is guilty of indecent exposure when such  
2 person intentionally exposes his or her sex organs or anus or  
3 the sex organs or anus of another person or engages in any  
4 overt act of sexual gratification, and does so under circum-  
5 stances in which the person knows that the conduct is likely  
6 to cause affront or alarm.

7 (b) Any person who violates the provisions of this section  
8 shall be guilty of a misdemeanor, and, upon conviction  
9 thereof, shall be confined in the county jail not more than  
10 ninety days, or fined not more than two hundred fifty dollars  
11 and confined in the county jail not more than ninety days.

**§61-8B-11. Sexual offenses—Evidence.**

1 (a) In any prosecution under this article in which the  
2 victim's lack of consent is based solely on the incapacity to  
3 consent because such victim was below a critical age, evidence  
4 of specific instances of the victim's sexual conduct, opinion evi-  
5 dence of the victim's sexual conduct and reputation evidence of  
6 the victim's sexual conduct shall not be admissible. In any  
7 other prosecution under this article, evidence of specific in-  
8 stances of the victim's prior sexual conduct with the defendant  
9 shall be admissible on the issue of consent: *Provided*, That such  
10 evidence heard first out of the presence of the jury is found by  
11 the judge to be relevant.

12 (b) In any prosecution under this article evidence of speci-  
13 fic instances of the victim's sexual conduct with persons other  
14 than the defendant, opinion evidence of the victim's sexual  
15 conduct and reputation evidence of the victim's sexual conduct  
16 shall not be admissible: *Provided*, That such evidence shall be  
17 admissible solely for the purpose of impeaching credibility, if  
18 the victim first makes his or her previous sexual conduct an  
19 issue in the trial by introducing evidence with respect thereto.

20 (c) In any prosecution under this article, neither age nor  
21 mental capacity of the victim shall preclude the victim from  
22 testifying.

**§61-8B-12. Same—Defense.**

1 (a) In any prosecution under this article in which the



2 victim's lack of consent is based solely on the incapacity to  
3 consent because such victim was below a critical age, mentally  
4 defective, mentally incapacitated or physically helpless, it is  
5 an affirmative defense that the defendant, at the time he or  
6 she engaged in the conduct constituting the offense, did not  
7 know of the facts or conditions responsible for such incapacity  
8 to consent, unless the defendant is reckless in failing to know  
9 such facts or conditions.

10 (b) The affirmative defense provided in subsection (a) of  
11 this section shall not be available in any prosecution under  
12 subdivision (2), subsection (a), section three, and under  
13 subdivision (3), subsection (a), section seven of this article.

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## CHAPTER 57

(Com. Sub. for S. B. 4—By Senator White and Senator Boettner)

[Passed March 5, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-a, relating to protection of victims generally; making certain findings and purposes; permitting statements of crime victims at sentencing hearings; providing for preparation of victim impact statements in criminal cases; when impact statements received; contents; use; right of defendants to review statement and present evidence; requiring restitution by defendant; when restitution required; how restitution made; providing a procedure for issuing restitution order; requiring the attorney general's office in conjunction with the department of public safety and the department of human services to develop and implement guidelines for law-enforcement agencies and prosecuting attorneys' offices consistent with the purposes of this act.

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

That chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by

adding thereto a new article, designated article eleven-a, to read as follows:

**ARTICLE 11A. VICTIM PROTECTIN ACT OF 1984.**

§61-11A-1. Legislative findings and purpose.

§61-11A-2. Testimony of crime victim at sentencing hearing.

§61-11A-3. Victims impact statement; when required; contents; use, right of defendant to review and present evidence.

§61-11A-4. Restitution; when ordered.

§61-11A-5. Restitution; procedure for issuing order.

§61-11A-6. State guidelines for fair treatment of crime victims and witnesses in the criminal justice system.

§61-11A-7. Severability

**§61-11A-1. Legislative findings and purpose.**

1 (a) The Legislature finds and declares that without the  
2 cooperation of victims and witnesses, the criminal justice  
3 system would cease to function, yet too often these  
4 individuals are either ignored by the criminal justice system  
5 or simply used as tools to identify and punish offenders.

6 The Legislature finds further that all too often the victim  
7 of a serious crime is forced to suffer physical, psychological  
8 or financial hardship first as a result of the criminal act and  
9 then as a result of contact with a criminal justice system not  
10 totally responsive to the needs of such victims.

11 The Legislature finds further that under the current law,  
12 law-enforcement agencies must have cooperation from a  
13 victim of crime and yet neither the agencies nor the legal  
14 system can offer adequate protection or assistance when the  
15 victim, as a result of such cooperation, is threatened or  
16 intimidated.

17 The Legislature finds further that while the defendant is  
18 provided with counsel who can explain both the criminal  
19 justice process and the rights of the defendant, the victim or  
20 witness has no counterpart and is usually not even notified  
21 when the defendant is released on bail, the case is  
22 dismissed, a plea to a lesser charge is accepted or a court  
23 date is changed.

24 The Legislature finds further that the victim or witness  
25 who cooperates with the prosecutor often find that the

26 transportation, parking facilities and child care services at  
27 the court are unsatisfactory and they must often share the  
28 pretrial waiting room with the defendant or his family and  
29 friends.

30 The Legislature finds further that the victim may lose  
31 valuable property to a criminal only to lose it again for long  
32 periods of time to law-enforcement officials, until the trial  
33 and appeals are over; many times that property is damaged  
34 or lost, which is particularly stressful for the elderly or  
35 poor.

36 (b) The Legislature declares that the purposes of this  
37 article are to enhance and protect the necessary role of  
38 crime victims and witnesses in the criminal justice process  
39 and to ensure that the state and local governments do all  
40 that is possible within the limits of available resources to  
41 assist victims and witnesses of crime without infringing on  
42 the constitutional rights of the defendant.

**§61-11A-2. Testimony of crime victim at sentencing hearing.**

1 (a) For the purposes of this section, "victim" means a  
2 person who is a victim of a felony, the fiduciary of a  
3 deceased victim's estate or a member of a deceased victim's  
4 immediate family.

5 (b) Prior to the imposition of sentence upon any  
6 defendant who has been found guilty of a felony or has  
7 pleaded guilty or nolo contendere to any felony, the court  
8 shall permit the victim of the crime to appear before the  
9 court for the purpose of making an oral statement for the  
10 record if the victim notifies the court of his desire to make  
11 such a statement after receiving notification provided in  
12 subsection (c) of this section. If the victim fails to so notify  
13 the court such failure shall constitute a waiver of the right  
14 to make an oral statement. In lieu of such appearance and  
15 oral statement, the victim may submit a written statement  
16 to the court or to the probation officer in charge of the case.  
17 Such probation officer shall forthwith file any such  
18 statement delivered to his office with the sentencing court,  
19 and the statement shall be made a part of the record at the  
20 sentencing hearing. Any such statement, whether oral or  
21 written, shall relate solely to the facts of the case and the

22 extent of any injuries, financial losses and loss of earnings  
23 directly resulting from the crime for which the defendant is  
24 being sentenced.

25 (c) Within a reasonable time, prior to the imposition of  
26 sentence upon such defendant, the prosecuting attorney or  
27 assistant prosecuting attorney in charge of the case shall in  
28 writing advise the person who was the victim of such crime  
29 or in the case of a minor, the parent or guardian of such  
30 minor, or the fiduciary of his estate, if he be then deceased,  
31 of the date, time and place of the original sentencing  
32 hearing, and of the victim's rights to submit a written or  
33 oral statement to the sentencing court as hereinafter  
34 provided.

35 (d) The oral or written statement given or submitted by  
36 any victim in accordance with the provisions of this section  
37 shall be in addition to and not in lieu of the victim impact  
38 statement required by the provisions of section three of this  
39 article.

**§61-11A-3. Victim impact statement; when required; contents; use; right of defendant to review and present evidence.**

1 (a) In every case in which a presentence report is  
2 ordered by the court, such presentence report shall contain  
3 a victim impact statement unless the court orders  
4 otherwise, if the defendant, in committing a felony or  
5 misdemeanor, caused physical, psychological or economic  
6 injury or death of the victim.

7 (b) The victim impact statement shall be prepared by  
8 the probation officer and shall include the identity of the  
9 victim, an itemization of any economic loss suffered by the  
10 victim as a result of the offense, a description of the nature  
11 and extent of any physical or psychological injury suffered  
12 by the victim as a result of the offense, the details of any  
13 change in the victim's personal welfare, lifestyle or family  
14 relationships as a result of the offense, whether there has  
15 been any request for psychological or medical services  
16 initiated by the victim or the victim's family as a result of  
17 the offense, and such other information related to the

18 impact of the offense upon the victim as may be required by  
19 the court.

20 (c) If the court does not order a presentence  
21 investigation and report, the prosecuting attorney may  
22 request that the probation officer prepare a victim impact  
23 statement. The victim impact statement shall be considered  
24 by the court as a factor in determining the appropriate  
25 sentence. Additionally, the statement may be utilized for  
26 the determination of claims by victims of crimes pursuant  
27 to the provisions of article two-a, chapter fourteen of this  
28 code.

29 (d) A victim impact statement prepared in accordance  
30 with the provisions of this section, other than for claims by  
31 victims of crimes pursuant to the provisions of article two-  
32 a, chapter fourteen of this code, shall be made available to  
33 the defendant, and his counsel if he is so represented, at  
34 least ten days prior to the date set for pronouncement of his  
35 sentence. The court shall, upon motion by or on behalf of the  
36 defendant, grant the defendant a hearing, whereby he may  
37 introduce testimony or other information related to any  
38 alleged factual inaccuracies in the statement.

#### **§61-11A-4. Restitution; when ordered.**

1 (a) The court, when sentencing a defendant convicted of  
2 a felony or misdemeanor causing physical, psychological or  
3 economic injury or loss to a victim, shall order, in addition  
4 to or in lieu of any other penalty authorized by law, that the  
5 defendant make restitution to any victim of the offense,  
6 unless the court finds restitution to be wholly or partially  
7 impractical as set forth in this article. If the court does not  
8 order restitution, or orders only partial restitution, under  
9 this section, the court shall state on the record the reasons  
10 therefor.

11 (b) The order shall require that such defendant:

12 (1) In the case of an offense resulting in damage to, loss  
13 of, or destruction of property of a victim of the offense

14 (A) Return the property to the owner of the property or  
15 someone designated by the owner; or

16 (B) If return of the property under subparagraph (A) is  
17 impossible, impractical or inadequate, pay an amount  
18 equal to the greater of: (i) The value of the property on the  
19 date of sentencing, or (ii) the value of the property on the  
20 date of the damage, loss or destruction less the value (as of  
21 the date the property is returned) of any part of the property  
22 that is returned;

23 (2) In the case of an offense resulting in bodily injury to  
24 a victim

25 (A) Pay an amount equal to the cost of necessary  
26 medical and related professional services and devices  
27 relating to physical, psychiatric and psychological care,  
28 including nonmedical care and treatment rendered in  
29 accordance with a method of healing recognized by the law  
30 of the place of treatment;

31 (B) Pay an amount equal to the cost of necessary  
32 physical and occupational therapy and rehabilitation; and

33 (C) Reimburse the victim for income lost by such victim  
34 as a result of such offense;

35 (3) In the case of an offense resulting in bodily injury  
36 that also results in the death of a victim, pay an amount  
37 equal to the cost of necessary funeral and related services;  
38 and

39 (4) In any case, if the victim (or if the victim is deceased,  
40 the victim's estate) consents, or if payment is impossible or  
41 impractical, make restitution in services in lieu of money, or  
42 make restitution to a person or organization designated by  
43 the victim or the estate.

44 (c) If the court decides to order restitution under this  
45 section, the court shall, if the victim is deceased, order that  
46 the restitution be made to the victim's estate.

47 (d) The court shall impose an order of restitution to the  
48 extent that such order is as fair as possible to the victim and  
49 the imposition of such order will not unduly complicate or  
50 prolong the sentencing process.

51 (e) The court shall not impose restitution with respect to

52 a loss for which the victim has received or is to receive  
53 compensation, except that the court may, in the interest of  
54 justice, order restitution to any person who has  
55 compensated the victim for such loss to the extent that such  
56 person paid the compensation. An order of restitution shall  
57 require that all restitution to victims under such order be  
58 made before any restitution to any other person under such  
59 order is made.

60 (f) The court may require that such defendant make  
61 restitution under this section within a specified period or in  
62 specified installments. The end of such period or the last  
63 such installment shall not be later than: (i) The end of the  
64 period of probation, if probation is ordered; (ii) five years  
65 after the end of the term of imprisonment imposed, if the  
66 court does not order probation; and (iii) five years after the  
67 date of sentencing in any other case. If not otherwise  
68 provided by the court under this subsection, restitution shall  
69 be made immediately.

70 (g) If such defendant is placed on probation or paroled  
71 under this article, any restitution ordered under this sec-  
72 tion shall be a condition of such probation or parole unless  
73 the court or parole board finds restitution to be wholly  
74 or partially impractical as set forth in this article. The  
75 court may revoke probation and the parole board may  
76 revoke parole if the defendnat fails to comply with such  
77 order. In determining whether to revoke probation or  
78 parole, the court or parole board shall consider the  
79 defendant's employment status, earning ability, financial  
80 resources, the willfulness of the defendant's failure to pay,  
81 and any other special circumstances that may have a  
82 bearing on the defendant's ability to pay.

83 (h) An order of restitution may be enforced by the state  
84 or a victim named in the order to receive the restitution in  
85 the same manner as a judgment in a civil action.

**§61-11A-5. Restitution; procedure for issuing order.**

1 (a) The court, in determining whether to order  
2 restitution under this article and in determining the  
3 amount of such restitution, shall consider the amount of the  
4 loss sustained by any victim as a result of the offense, the

5 financial resources of the defendant, the financial needs  
6 and earning ability of the defendant and the defendant's  
7 dependents, and such other factors as the court deems  
8 appropriate.

9 (b) The court may order the probation officer of the  
10 court to obtain information pertaining to the factors set  
11 forth in subsection (a) of this section. The probation officer  
12 of the court shall include the information collected in the  
13 report of presentence investigation or in a separate report,  
14 as the court directs.

15 (c) The court shall disclose to both the defendant and  
16 the prosecuting attorney all portions of the presentence or  
17 other report pertaining to the matters described in  
18 subsection (a) of this section.

19 (d) Any dispute as to the proper amount or type of  
20 restitution shall be resolved by the court by the  
21 preponderance of the evidence. The burden of  
22 demonstrating the amount of the loss sustained by a victim  
23 as a result of the offense shall be on the prosecuting  
24 attorney. The burden of demonstrating the financial  
25 resources of the defendant and the financial needs of the  
26 defendant and such defendant's dependents shall be on the  
27 defendant. The burden of demonstrating such other matters  
28 as the court deems appropriate shall be upon the party  
29 designated by the court as justice requires.

**§61-11A-6. State guidelines for fair treatment of crime victims  
and witnesses in the criminal justice system.**

1 (a) No later than the first day of July, one thousand nine  
2 hundred eighty-four, the attorney general shall promulgate  
3 rules and regulations in accordance with the provisions of  
4 chapter twenty-nine-a of this code, establishing guidelines  
5 for law-enforcement agencies and prosecuting attorneys'  
6 offices consistent with the purposes of this article. The  
7 attorney general shall seek the advice of the department of  
8 public safety and department of human services in  
9 preparing such rules and regulations. In preparing such  
10 rules and regulations, the following objectives shall be  
11 considered:



12 (1) The arresting law-enforcement agency should  
13 ensure that victims routinely receive emergency social and  
14 medical services as soon as possible and are given  
15 information on the following

16 (A) Availability of crime victim compensation (where  
17 applicable);

18 (B) Community-based victim treatment programs;

19 (C) The role of the victim in the criminal justice process,  
20 including what they can expect from the system as well as  
21 what the system expects from them; and

22 (D) Stages in the criminal justice process of significance  
23 to a crime victim, and the manner in which information  
24 about such stages can be obtained.

25 (2) The prosecuting attorney or his assistant should  
26 ensure that victims and witnesses receive information on  
27 steps that law-enforcement officers and prosecuting  
28 attorneys can take to protect victims and witnesses from  
29 intimidation.

30 (3) All victims and witnesses who have been scheduled  
31 to attend criminal justice proceedings should be notified by  
32 the prosecuting attorneys' offices as soon as possible of any  
33 scheduling changes which will affect their appearances.

34 (4) Victims, witnesses and one member of the  
35 immediate family of those victims and witnesses should, if  
36 such persons provide the appropriate official with a current  
37 address and telephone number, receive prompt advance  
38 notification, if possible, of judicial proceedings relating to  
39 their case, from the prosecuting attorney's office, including:

40 (A) The arrest of an accused;

41 (B) The initial appearance of an accused before a  
42 judicial officer;

43 (C) The release of the accused pending judicial  
44 proceedings; and

45 (D) Proceedings in the prosecution of the accused

46 (including the entry of a plea of guilty, trial, sentencing,  
47 and, where a term of imprisonment is imposed, the release  
48 of the accused from such imprisonment).

49 (5) The victim of a serious crime, or in the case of a minor  
50 child or a homicide, the family of the victim, shall be  
51 consulted by the prosecuting attorney in order to obtain the  
52 views of the victim or family about the disposition of any  
53 criminal case brought as a result of such crime, including  
54 the views of the victim or family about:

55 (A) Dismissal;

56 (B) Release of the accused pending judicial proceedings;

57 (C) Plea negotiations; and

58 (D) Pretrial diversion program.

59 (6) Victims and other prosecution witnesses should, if  
60 practical, be provided prior to court appearance a waiting  
61 area that is separate from all other witnesses.

62 (7) Law-enforcement agencies should promptly return  
63 victim's property held for evidentiary purposes unless there  
64 is a compelling law-enforcement reason for retaining it.

65 (8) A victim or witness who so requests should be  
66 assisted by law-enforcement agencies and prosecuting  
67 attorneys in informing employers that the need for victim  
68 and witness cooperation in the prosecution of the case may  
69 necessitate absence of that victim or witness from work. A  
70 victim or witness who, as a direct result of a crime or of  
71 cooperation with law-enforcement agencies or attorneys  
72 for the government, is subjected to serious financial strain,  
73 should be assisted by the appropriate state agencies in  
74 dealing with creditors.

75 (b) Nothing in this section shall be construed as creating  
76 a cause of action against the state of West Virginia or any of  
77 its political subdivisions.

**§61-11A-7. Severability.**

1 The provision of subdivision (cc), section ten, article two,

- 2 chapter two of this code shall apply to the provisions of this
- 3 article to the same extent as if the provision of said
- 4 subdivision were set forth in extenso herein.

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## CHAPTER 58

(Com. Sub. for H. B. 1252—By Delegate Hatcher)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-c, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections one-a and seventeen-b, relating to bail and recognizance generally; authorizing the release of certain persons upon their personal recognizance in certain instances; and defining the offense of failure to appear when required to do so and providing for penalties therefor.

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

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

### ARTICLE 1C. BAIL.

§62-1C-1a. Release upon own recognizance authorized.

§62-1C-17a. Failure to appear; penalties.

#### §62-1C-1a. Release upon own recognizance authorized.

- 1 Any other provision of this article to the contrary notwith-
- 2 standing, when from all the circumstances, the court or magis-
- 3 trate is of the opinion that the defendant or person arrested
- 4 will appear as may be required of him, either before or after
- 5 conviction, such defendant or person arrested may be re-
- 6 leased upon his own recognizance.

#### §62-1C-17b. Failure to appear; penalties.

- 1 (a) Any person, who, having been released upon his per-
- 2 sonal recognizance pursuant to section one-a of this article
- 3 or having been otherwise admitted to bail and released in

4 accordance with this article, and who shall willfully and  
5 without just cause fail to appear as and when it may be re-  
6 quired of him, shall be guilty of the offense as hereinafter  
7 prescribed, and, upon conviction thereof, shall be punished  
8 in the manner hereinafter provided.

9 (b) If any such person was admitted to bail or released  
10 after being arrested for, charged or convicted of a felony  
11 and shall thereafter be convicted for a violation of the pro-  
12 visions of subsection (a) of this section, such person shall be  
13 guilty of a felony and shall be fined not more than five  
14 thousand dollars or imprisoned not less than one nor more  
15 than five years, or both such fine and imprisonment.

16 (c) If any such person was admitted to bail or released  
17 after being arrested for, charged or convicted of a misdemeanor  
18 and shall thereafter be convicted for a violation of the  
19 provisions of subsection (a) of this section, such person shall  
20 be guilty of a misdemeanor and shall be fined not more than  
21 one thousand dollars or confined in the county jail for not  
22 more than one year, or both such fine and confinement.

23 (d) If any such person was admitted to bail or released  
24 pending appearance as a material witness and shall there-  
25 after fail to appear when and where it shall have been re-  
26 quired of him, such person shall be guilty of a misdemeanor,  
27 and, upon conviction thereof, shall be fined not more than  
28 one thousand dollars or confined in the county jail not more  
29 than one year, or both such fine and confinement.

30 (e) Any penalty authorized by this section shall be in  
31 addition to any forfeiture authorized or mandated by this  
32 article or by any other provision of law.

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## CHAPTER 59

(Com. Sub. for H. B. 1044—By Delegate Love)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new section, designated section three, relating to stay of execution of sentence pending appeal generally; providing for removal to the penitentiary or other place of incarceration; authorizing the return of a defendant to a place of confinement near the place of trial if necessary; and establishing a procedure for bail in cases where a defendant is removed to the penitentiary or confined elsewhere pending disposition of appeal.

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

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

**ARTICLE 7. EXECUTION OF SENTENCES; STAYS.**

**§62-7-3. Stay of proceedings; removal to penitentiary after reasonable time pending appeal; procedure for bail.**

1 (a) Whenever a stay of proceedings has been granted  
2 pursuant to section one or two of this article or any rule of  
3 court relating to stays granted under those sections, and  
4 the court upon its own motion or after notice and motion by  
5 the prosecuting attorney or the defendant shall determine that  
6 it is no longer necessary to retain the defendant at a place  
7 of confinement near the place of trial in order to permit the  
8 defendant to assist in the preparation of his or her appeal to  
9 the supreme court of appeals, then unless the defendant shall  
10 have posted bail, the sentencing court may vacate the order  
11 granting the stay or, in the case of the supreme court of  
12 appeals, the supreme court of appeals may vacate its order  
13 granting the stay upon the recommendation of the circuit  
14 court. Upon the vacation of the order granting the stay, the  
15 defendant shall be removed to the penitentiary pursuant to  
16 the provisions of section seven of this article: *Provided*, That  
17 the sentencing court or the supreme court of appeals may  
18 order incarceration elsewhere for other good cause. In the  
19 case of the removal of a defendant from a place of confine-

20 ment near the place of trial, if at any time during the pendency  
21 of the petition for appeal or the appeal the defendant shall  
22 post bail or the defendant or the defendant's counsel shall  
23 have exhibited the defendant's readiness and ability to post  
24 such bail, then the stay shall again be granted or the super-  
25 sedeas shall be reinstated and the defendant dealt with as  
26 hereinafter provided in this section. If a defendant be con-  
27 fined away from the place of trial under the provisions of  
28 this subsection, he may nonetheless be returned to a place  
29 of confinement near the place of trial at any time his presence  
30 is necessary to facilitate preparation for, or access to, pro-  
31 ceedings for an appeal.

32 (b) If a defendant is not released pending disposition of  
33 appeal and is removed to the penitentiary or other place of  
34 confinement in accordance with the provisions of subsection  
35 (a) of this section, then upon the fixing of bail in a proper  
36 case, the defendant may be admitted to bail as heretofore pro-  
37 vided by law and released from any incarceration in accord-  
38 ance with the terms and conditions of such bail, by the  
39 warden of the state penitentiary or other officer having lawful  
40 custody, upon the release order of the clerk or judge of the  
41 court before whom such bail is to be given. A release order  
42 shall be promptly issued by the clerk or judge when the  
43 requirements for bail have been complied with or when the  
44 defendant or the defendant's counsel has exhibited the de-  
45 fendant's readiness and ability to comply with such require-  
46 ments. Such release order may be provisional in form indi-  
47 cating that proper arrangements for bail have been made and  
48 could be completed upon the personal appearance of the  
49 defendant before the clerk or judge. In order to be admitted  
50 to bail following the execution by the clerk or judge of the  
51 release order or provisional release order the defendant shall  
52 be promptly brought before the court or clerk by the officer  
53 having custody. If the circumstances under which bail was  
54 fixed have changed so that bail is no longer appropriate, bail  
55 may be denied: *Provided*, That nothing in this subsection is  
56 intended to alter the conditions under which an individual may  
57 be admitted to bail under other provisions of law.

## CHAPTER 60

(H. B. 1694—By Delegate Davis and Delegate Crookshanks)

Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.†

AN ACT to amend and reenact sections one, two, thirteen, fifteen, sixteen, seventeen and twenty-two, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article two by adding thereto five new sections, designated sections thirty-two, thirty-three, thirty-four, thirty-five and thirty-six; and to amend and reenact section ten, article three of said chapter forty-eight, relating to the awarding of alimony, child support and other relief and the distribution of marital property upon the ordering of a divorce or annulment or the granting of a decree of separate maintenance generally; defining certain terms; setting forth conditions under which marriages are voidable and shall be void; providing for the annulment or affirmation of marriage; describing the temporary relief which a court may grant during the pendency of an action for divorce, annulment or separate maintenance; establishing a procedure for ex parte relief without notice; describing the relief which a court may grant upon ordering a divorce or annulment or granting a decree of separate maintenance; empowering the court to order accounts to be taken as to all or any part of marital property or the separate estates of the parties; providing that in awarding or denying alimony the court may consider fault or misconduct of either or both parties; providing that an award of alimony may be barred when both parties prove grounds or when a party has committed adultery, been convicted of a felony, or has actually abandoned or deserted; directing the manner in which a court is to structure relief when the parties have executed a separation agreement; describing the matters which a court shall consider in determining the amount to be ordered as alimony, child support or separate maintenance; prohibiting the recordation of a judgment order in a case of divorce, annulment or separate maintenance and providing for the recordation of an abstract of such order and an affidavit so as to create a lien; requiring the commencement of a proceeding within sixty days in order to preserve any lien so created; describing the proceedings

whereby a person may be found to be in criminal contempt or civil contempt and prescribing penalties for persons found to be in contempt; authorizing the court to enter judgment for arrearages in the payment of alimony, child support or separate maintenance, and to require security to ensure payment of future installments; allowing a court to attach forthwith the body of a person who refuses or fails to respond to the lawful process of the court or to comply with an order of the court; describing the manner in which a court is to divide the marital property of the parties to an action for divorce, annulment or separate maintenance; setting forth the matters which a court shall consider in distributing marital property between the parties; listing the alternatives available to the court for ascertaining and distributing the respective interests of the parties in marital property; requiring the court to set out findings of fact and conclusions of law and the reasons for dividing marital property; stating that neither the provisions of article two, chapter forty-eight of the code nor the doctrine of equitable distribution of marital property shall be construed to create community property nor any other interest or estate in property except those previously recognized in this state; describing the circumstances under which a husband or wife may alienate his or her separate property and describing the effect of transfers of property on third parties; providing for the full disclosure of all assets owned in full or in part by either party separately or by the parties jointly; requiring the use of a standard form for disclosure; establishing the time for filing the disclosure form; providing for the confidentiality of disclosures; describing the action to be taken upon a failure to disclose information; providing that a deliberate failure to provide disclosure constitutes an offense of false swearing; authorizing an injunction against the distribution of property and allowing the court to set aside certain encumbrances or dispositions of property to third persons; authorizing the filing of a notice of lis pendens upon the commencement of an action for divorce, annulment or separate maintenance; providing for the retroactive effect of amendments made to article two, chapter forty-eight of said code; and stating that in actions which require the court to divide marital property, the presumption of gift between spouses shall not apply.



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

That sections one, two, thirteen, fifteen, sixteen, seventeen and twenty-two, article two, chapter forty-eight 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 five new sections, designated sections thirty-two, thirty-three, thirty-four, thirty-five and thirty-six; and to amend and reenact section ten, article three of said chapter forty-eight, all to read as follows:

**Article**

**2. Divorce, Annulment and Separate Maintenance.**

**3. Property, Rights and Liabilities of Married Women; Husband and Wife.**

**ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.**

- §48-2-1. Definitions.
- §48-2-2. For what and when marriages void; affirmation or annulment of marriage.
- §48-2-13. Temporary relief during pendency of action for divorce, annulment or separate maintenance.
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**§48-2-1. Definitions.**

- 1 (a) "Alimony" means the allowance which a person pays
- 2 to or in behalf of the support of his or her spouse or divorced
- 3 spouse while they are separated or after they are divorced.
- 4 The payment of alimony may be required by court order or
- 5 by the terms of a separation agreement. Alimony may be paid
- 6 in a lump sum or paid in installments as periodic alimony.
- 7 Alimony includes temporary alimony as that term is used in
- 8 section thirteen of this article, as well as alimony as that term

9 is used in section fifteen of this article and elsewhere through-  
10 out this article.

11 (b) "Antenuptial agreement" or "prenuptial agreement"  
12 means an agreement between a man and woman before mar-  
13 riage, but in contemplation and generally in consideration of  
14 marriage, whereby the property rights and interests of the pro-  
15 spective husband and wife, or both of them, are determined, or  
16 where property is secured to either or both of them, to their  
17 separate estate, or to their children or other persons. An ante-  
18 nuptial agreement may include provisions which define the re-  
19 spective property rights of the parties during the marriage, or in  
20 the event of the death of either or both of the parties, and may  
21 provide for the disposition of marital property upon an annul-  
22 ment of the marriage or a divorce or separation of the parties.  
23 A prenuptial agreement is void if at the time it is made:

24 (1) Either of the parties is a minor; or

25 (2) The female party to the agreement is pregnant: *Pro-*  
26 *vided*, That such female shall be presumed for the purposes of  
27 this article to have been pregnant at the time the agreement was  
28 made if she gives birth to a child at any time within the nine  
29 month period next following the execution of the agreement.

30 (c) "Marital property" means:

31 (1) All property and earnings acquired by either spouse  
32 during a marriage, including every valuable right and interest,  
33 corporeal or incorporeal, tangible or intangible, real or per-  
34 sonal, regardless of the form of ownership, whether legal or  
35 beneficial, whether individually held, held in trust by a third  
36 party, or whether held by the parties to the marriage in some  
37 form of co-ownership such as joint tenancy or tenancy in com-  
38 mon, joint tenancy with the right of survivorship, or any other  
39 form of shared ownership recognized in other jurisdictions  
40 without this state, except that marital property shall not in-  
41 clude separate property as defined in subsection (d) of this  
42 section; and

43 (2) The amount of any increase in value in the separate  
44 property of either of the parties to a marriage, which increase  
45 results from (A) an expenditure of funds which are marital

46 property, including an expenditure of such funds which reduces  
47 indebtedness against separate property, extinguishes liens, or  
48 otherwise increases the net value of separate property, or (B)  
49 work performed by either or both of the parties during the  
50 marriage;

51 The definitions of "marital property" contained in this  
52 subsection and "separate property" contained in subsection (d)  
53 of this section shall have no application outside of the provi-  
54 sions of this article, and the common law as to the ownership  
55 of the respective property and earnings of a husband and wife,  
56 as altered by the provisions of article three of this chapter and  
57 other provisions of this code, are not abrogated by implication  
58 or otherwise, except as expressly provided for by the provisions  
59 of this article as such provisions are applied in actions brought  
60 under this article or for the enforcement of rights under this  
61 article.

62 (d) "Separate property" means:

63 (1) Property acquired by a person before marriage; or

64 (2) Property acquired by a person during marriage in ex-  
65 change for separate property which was acquired before the  
66 marriage; or

67 (3) Property acquired by a person during marriage, but  
68 excluded from treatment as marital property by a valid agree-  
69 ment of the parties entered into before or during the marriage;  
70 or

71 (4) Property acquired by a person during marriage by gift,  
72 bequest, devise, descent or distribution; or

73 (5) Property acquired by a party during a marriage but  
74 after the separation of the parties and before the granting of a  
75 divorce, annulment or decree of separate maintenance; and

76 (6) Any increase in the value of separate property as de-  
77 fined in subdivision (1), (2), (3), (4) or (5) of this subsec-  
78 tion which is due to inflation or to a change in market value  
79 resulting from conditions outside the control of the parties.

80 (e) "Separation" or "separation of the parties" means the  
81 separation of the parties next preceding the filing of an action

82 under the provisions of this article, which separation continues,  
83 without the parties cohabiting or otherwise living together as  
84 husband and wife, and without interruption.

85 (f) "Separation agreement" means a written agreement en-  
86 tered into by a husband and wife whereby they agree to live  
87 separate and apart from each other and, in connection there-  
88 with, agree to settle their property rights; or to provide for  
89 the custody and support of their minor child or children, if  
90 any; or to provide for the payment or waiver of alimony by  
91 either party to the other; or to otherwise settle and compromise  
92 issues arising out of their marital rights and obligations. Insofar  
93 as an antenuptial agreement as defined in subsection (b) of  
94 this section affects the property rights of the parties or the dis-  
95 position of property upon an annulment of the marriage, or a  
96 divorce or separation of the parties, such antenuptial agree-  
97 ment shall be regarded as a separation agreement under the  
98 provisions of this article.

**§48-2-2. For what and when marriages void; affirmation or annul-  
ment of marriage.**

1 (a) The following marriages are voidable and shall be void  
2 from the time they are so declared by a judgment order of  
3 nullity:

4 (1) Marriages which are prohibited by law on account of  
5 either of the parties having a wife or husband of a prior mar-  
6 riage, when such prior marriage has not been terminated by  
7 divorce, annulment or death;

8 (2) Marriages which are prohibited by law on account of  
9 consanguinity or affinity between the parties;

10 (3) Marriages solemnized when either of the parties:

11 (A) Was an insane person, idiot or imbecile;

12 (B) Was afflicted with a venereal disease;

13 (C) Was incapable, because of natural or incurable impo-  
14 tency of the body, of entering into the marriage state;

15 (D) Was under the age of consent; or

16 (E) Had been, prior to the marriage and without the know-  
17 ledge of the other party, convicted of an infamous offense;

18 (4) Marriages solemnized when, at the time of the marriage,  
19 the wife, without the knowledge of the husband:

20 (A) Was with child by some person other than the hus-  
21 band; or

22 (B) Had been, prior to the marriage, notoriously a prostitute;

23 Or,

24 (5) Marriages solemnized when, prior to the marriage, the  
25 husband, without the knowledge of the wife, had been notor-  
26 ously a licentious person.

27 (b) When a marriage is supposed to be void, or voidable,  
28 or any doubt exists as to its validity, for any of the causes  
29 set forth in subsection (a) of this section, or for any other  
30 cause recognized in law, either party may, except as provided  
31 in the next succeeding section, institute an action for annulling  
32 or affirming the same, and, upon hearing the proofs and alle-  
33 gations of the parties, the court shall enter a judgment order  
34 annulling or affirming the marriage, according to the right of  
35 the case. In every such case, and in every other case where  
36 the validity of a marriage is called into question, it shall be  
37 presumed that the marriage is valid, unless the contrary be  
38 clearly proven, and, if the marriage be adjudged to be valid, it  
39 shall be conclusive upon all persons concerned.

**§48-2-13. Temporary relief during pendency of action for divorce,  
annulment or separate maintenance.**

1 (a) At the time of the filing of the complaint or at any  
2 time after the commencement of an action for divorce, annul-  
3 ment or separate maintenance under the provisions of this  
4 article, and upon motion for temporary relief, notice of hear-  
5 ing and hearing, the court may order all or any portion of  
6 the following temporary relief, which order shall govern the  
7 marital rights and obligations of the parties during the pen-  
8 dency of the action:

9 (1) The court may require either party to pay temporary

10 alimony in the form of periodic installments, or a lump sum,  
11 or both, for the maintenance of the other party.

12 (2) The court may provide for the custody of minor  
13 children of the parties subject to such rights of visitation,  
14 both in and out of the residence of the custodial parent or  
15 other person or persons having custody, as may be appro-  
16 priate under the circumstances.

17 (3) The court may require either party to pay tempo-  
18 rary child support in the form of periodic installments for the  
19 maintenance of the minor children of the parties.

20 (4) The court may compel either party to pay attorney's  
21 fees and court costs reasonably necessary to enable the  
22 other party to prosecute or defend the action in the trial court.  
23 The question of whether or not a party is entitled to temporary  
24 alimony shall not be decisive of that party's right to a reason-  
25 able allowance of attorney's fees and court costs. An order  
26 for temporary relief awarding attorney fees and court costs  
27 may be modified at any time during the pendency of the  
28 action, as the exigencies of the case or equity and justice may  
29 require, including, but not limited to, a modification which  
30 would require full or partial repayment of fees and costs by  
31 a party to the action to whom or on whose behalf payment  
32 of such fees and costs was previously ordered. If an appeal  
33 be taken or an intention to appeal be stated, the court may  
34 further order either party to pay attorney fees and costs on  
35 appeal.

36 (5) As an incident to requiring the payment of tempo-  
37 rary alimony or temporary child support, the court may order  
38 either party to continue in effect existing policies of insurance  
39 covering the costs of health care and hospitalization of the  
40 other party and the minor children of the parties. Payments  
41 made to an insurer pursuant to this subdivision, either directly  
42 or by a deduction from wages, shall be deemed to be tempo-  
43 rary alimony or temporary child support, in such proportion  
44 as the court shall direct: *Provided*, That if the court does not  
45 set forth in the order that a portion of such payments is to  
46 be deemed temporary child support, then all such payments

47 made pursuant to this subdivision shall be deemed to be  
48 temporary alimony.

49 (6) As an incident to requiring the payment of temporary  
50 alimony or temporary child support, the court may grant the  
51 exclusive use and occupancy of the marital home to one of the  
52 parties during the pendency of the action, together with all  
53 or a portion of the household goods, furniture and furnishings,  
54 reasonably necessary for such use and occupancy. The court  
55 may require payments to third parties in the form of home loan  
56 installments, land contract payments, rent, payments for utility  
57 services, property taxes, insurance coverage or other expenses  
58 or charges reasonably necessary for the use and occupancy of  
59 the marital domicile. Payments made to a third party pursuant  
60 to this subdivision shall be deemed to be temporary alimony  
61 or temporary child support, in such proportion as the court  
62 shall direct: *Provided*, That if the court does not set forth  
63 in the order that a portion of such payments is to be deemed  
64 temporary child support, then all such payments made pur-  
65 suant to this subdivision shall be deemed to be temporary  
66 alimony: *Provided, however*, That the court may order such  
67 payments to be made without denominating them as either  
68 temporary alimony or temporary child support, reserving  
69 such decision until such time as the court determines the  
70 interests of the parties in marital property and equitably  
71 divides the same: *Provided further*, That at the time the court  
72 determines the interests of the parties in marital property and  
73 equitably divides the same, the court may consider the extent  
74 to which payments made to third parties under the provisions  
75 of this subdivision have affected the rights of the parties in  
76 marital property, and may treat such payments as a partial  
77 distribution of marital property notwithstanding the fact that  
78 such payments have been denominated temporary alimony  
79 or temporary child support or not so denominated under the  
80 provisions of this subdivision. Nothing contained in this  
81 subdivision shall abrogate an existing contract between either  
82 of the parties and a third party, or affect the rights and  
83 liabilities of either party or a third party under the terms  
84 of such contract.

85 (7) As an incident to requiring the payments of tempo-

86 rary alimony, the court may grant the exclusive use and posses-  
87 sion of one or more motor vehicles to either of the parties  
88 during the pendency of the action. The court may require  
89 payments to third parties in the form of automobile loan  
90 installments or insurance coverage, and any such payments  
91 made pursuant to this subdivision shall be deemed to be  
92 temporary alimony: *Provided*, That the court may order such  
93 payments to be made without denominating them as tempo-  
94 rary alimony, reserving such decision until such time as the  
95 court determines the interests of the parties in marital property  
96 and equitably divides the same: *Provided, however*, That at  
97 the time the court determines the interests of the parties in  
98 marital property and equitably divides the same, the court  
99 may consider the extent to which payments made to third  
100 parties under the provisions of this subdivision have affected  
101 the rights of the parties in marital property, and may treat  
102 such payments as a partial distribution of marital property  
103 notwithstanding the fact that such payments have been de-  
104 nominated temporary alimony or not so nominated under  
105 the provisions of this subdivision. Nothing contained in this  
106 subdivision shall abrogate an existing contract between either  
107 of the parties and a third party, or affect the rights and  
108 liabilities of either party or a third party under the terms  
109 of such contract.

110 (8) Where the pleadings include a specific request for  
111 specific property or raise issues concerning the equitable divi-  
112 sion of marital property, the court may enter such order as is  
113 reasonably necessary to preserve the estate of either or both  
114 of the parties, including the imposition of a constructive trust,  
115 so that such property be forthcoming to meet any order which  
116 may be made in the action, and may compel either party to  
117 give security to abide such order, or may require the property  
118 in question to be delivered into the temporary custody of a  
119 third party. The court may further order either or both of the  
120 parties to pay the costs and expenses of maintaining and  
121 preserving the property of the parties during the pendency  
122 of the action: *Provided*, That at the time the court deter-  
123 mines the interests of the parties in marital property and  
124 equitably divides the same, the court may consider the ex-  
125 tent to which payments made for the maintenance and preser-



126 vation of property under the provisions of this subdivision  
127 have affected the rights of the parties in marital property,  
128 and may treat such payments as a partial distribution of  
129 marital property. When appropriate, the court may release  
130 all or any part of such protected property for sale and sub-  
131 stitute all or a portion of the proceeds of the sale for such  
132 property.

133 (9) Unless a contrary disposition be found appropriate  
134 and ordered pursuant to other provisions of this section, then  
135 upon the motion of either party, the court may compel the  
136 other party to deliver to the movant party any of his or  
137 her separate estate which may be in the possession or control  
138 of the respondent party, and may make such further order  
139 as is necessary to prevent either party from interfering with  
140 the separate estate of the other.

141 (10) The court may enjoin either party from molesting  
142 or interfering with the other, or otherwise imposing any re-  
143 straint on the personal liberty of the other, or interfering with  
144 the custodial or visitation rights of the other.

145 (b) In ordering temporary relief under the provisions  
146 of this section, the court shall consider the financial needs of  
147 the parties, the present employment income and other recur-  
148 ring earnings of each party from any source, their income-  
149 earning abilities, and the respective legal obligations of each  
150 party to support himself or herself and to support any other  
151 persons. Except in extraordinary cases supported by specific  
152 findings set forth in the order granting relief, payments of  
153 temporary alimony and temporary child support are to be  
154 made from a party's employment income and other recurring  
155 earnings, and not from the corpus of a party's separate estate,  
156 and an award of such relief shall not be disproportionate to  
157 a party's ability to pay as disclosed by the evidence before  
158 the court.

159 (c) At any time after a party is abandoned or deserted  
160 or after the parties to a marriage have lived separate and  
161 apart in separate places of abode without any cohabitation,  
162 the party abandoned or either party living separate and  
163 apart may apply for relief pursuant to this section by insti-

164 tuting an action for divorce as provided in section ten of  
165 this article, alleging that the plaintiff reasonably believes  
166 that the period of abandonment or of living separate and  
167 apart will continue for the period prescribed by the applicable  
168 provisions of section four of this article. If the period of  
169 abandonment or living separate and apart continues for the  
170 period prescribed by the applicable provisions of section  
171 four of this article, the divorce action may proceed to a  
172 hearing as provided in sections twenty-four and twenty-five  
173 of this article without a new complaint being filed: *Provided,*  
174 That the party desiring to proceed to a hearing shall give  
175 the opposing party at least twenty days' notice of the time,  
176 place and purpose of the hearing, unless the opposing party  
177 shall have filed with the court a waiver of notice of further  
178 proceedings, signed by such opposing party. If such notice  
179 is required to be served, it shall be served in the same manner  
180 as a complaint, regardless of whether the opposing party  
181 has appeared or answered.

182 (d) To facilitate the resolution of issues arising at a  
183 hearing for temporary relief, the court may, or upon the  
184 motion of either party shall, order each of the parties to file  
185 with the court, and serve on the other party, a sworn state-  
186 ment of each party's assets, liabilities and employment income  
187 and other earnings from any source. The statement shall be  
188 in such form and contain such detailed information as the  
189 court may prescribe by general order. In addition, the court  
190 may, or upon the motion of either party shall, order the  
191 parties to comply with the disclosure requirements set forth  
192 in section thirty-three of this article, and, if necessary, con-  
193 tinue the hearing for temporary relief from time to time to  
194 afford the parties an opportunity to obtain and provide such  
195 information.

196 (e) An *ex parte* order granting all or part of the relief  
197 provided for in this section may be granted without written  
198 or oral notice to the adverse party if:

199 (1) It appears from specific facts shown by affidavit or  
200 by the verified complaint that immediate and irreparable  
201 injury, loss or damage will result to the applicant before the  
202 adverse party or such party's attorney can be heard in opposi-

203 tion. Such potential injury, loss or damage may be antici-  
204 pated when the following conditions exist: *Provided*, That  
205 the following list of conditions shall not be exclusive:

206 (A) There is a real and present threat of physical injury  
207 to the applicant at the hands or direction of the adverse  
208 party;

209 (B) The adverse party is preparing to quit the state with  
210 a minor child or children of the parties, thus depriving the  
211 court of jurisdiction in the matter of child custody;

212 (C) The adverse party is preparing to remove property  
213 from the state, or is preparing to transfer, convey, alienate,  
214 encumber or otherwise deal with property which could other-  
215 wise be subject to the jurisdiction of the court and subject  
216 to judicial order under the provisions of this section or section  
217 fifteen of this article;

218 And,

219 (2) The movant party or his or her attorney certifies  
220 in writing the efforts, if any, which have been made to give  
221 the notice, and the reasons supporting his claim that notice  
222 should not be required.

223 (e) Every *ex parte* order granted without notice shall  
224 be endorsed with the date and hour of issuance; shall be filed  
225 forthwith in the circuit clerk's office and entered of record;  
226 and shall set forth the finding of the court that unless the  
227 order is granted without notice there is probable cause to  
228 believe that existing conditions will result in immediate and  
229 irreparable injury, loss or damage to the movant party before  
230 the adverse party or his or her attorney can be heard in op-  
231 position. The order granting *ex parte* relief shall fix a time  
232 for a hearing for temporary relief to be held within a reason-  
233 able time, not to exceed twenty days, unless before the time  
234 so fixed for hearing, such hearing is continued for good  
235 cause shown or with the consent of the party against whom  
236 the *ex parte* order is directed. The reasons for the continu-  
237 ance shall be entered of record. Within the time limits de-  
238 scribed herein, when an *ex parte* order is made, a motion  
239 for temporary relief shall be set down for hearing at the

240 earliest possible time and shall take precedence of all matters  
241 except older matters of the same character. If the party  
242 who obtained the ex parte order fails to proceed with a  
243 motion for temporary relief, the court shall set aside the  
244 ex parte order. At any time after ex parte relief is granted,  
245 and on two days' notice to the party who obtained such  
246 relief or on such shorter notice as the court may direct, the  
247 adverse party may appear and move the court to set aside  
248 or modify the ex parte order on the grounds that the effects  
249 of such order are onerous or otherwise improper. In such  
250 event, the court shall proceed to hear and determine such  
251 motion as expeditiously as the ends of justice require.

**§48-2-15. Relief upon ordering divorce or annulment or granting  
decree of separate maintenance.**

1 (a) Upon ordering a divorce or granting a decree of separ-  
2 ate maintenance, the court may require either party to pay ali-  
3imony in the form of periodic installments, or a lump sum, or  
4 both, for the maintenance of the other party. Payments of ali-  
5imony and child support are to be ordinarily made from a par-  
6ty's employment income and other recurring earnings, but in  
7 cases where the employment income and other recurring earn-  
8 ings are not sufficient to adequately provide for payments of  
9 alimony and child support, the court may, upon specific find-  
10 ings set forth in the order, order the party required to make  
11 such payments to make the same from the corpus of his or  
12 her separate estate. An award of such relief shall not be dis-  
13 proportionate to a party's ability to pay as disclosed by the  
14 evidence before the court.

15 (b) Upon ordering the annulment of a marriage or a di-  
16 vorce or granting a decree of separate maintenance, the court  
17 may further order all or any part of the following relief:

18 (1) The court may provide for the custody of minor chil-  
19 dren of the parties, subject to such rights of visitation, both in  
20 and out of the residence of the custodial parent or other per-  
21 son or persons having custody, as may be appropriate under  
22 the circumstances. In addition, the court may, in its discretion,  
23 make such further order as it shall deem expedient, concerning  
24 the grant of reasonable visitation rights to any grandparent or

25 grandparents of the minor children upon application, if the  
26 grandparent or grandparents are related to such minor child  
27 through a party:

28 (A) Whose whereabouts are unknown, or

29 (B) Who did not answer or otherwise appear and defend  
30 the cause of action.

31 (2) The court may require either party to pay child support  
32 in the form of periodic installments for the maintenance of the  
33 minor children of the parties.

34 (3) As an incident to requiring the payment of alimony or  
35 child support, the court may order either party to continue in  
36 effect existing policies of insurance covering the costs of health  
37 care and hospitalization of the other party and the minor chil-  
38 dren of the parties: *Provided*, That if the other party is no  
39 longer eligible to be covered by such insurance because of the  
40 granting of an annulment or divorce, the court may require a  
41 party to substitute such insurance with a new policy to cover  
42 the other party, or may consider the prospective cost of such  
43 insurance in awarding alimony to be paid in periodic install-  
44 ments. Payments made to an insurer pursuant to this subdivi-  
45 sion, either directly or by a deduction from wages, shall be  
46 deemed to be alimony, child support or installment payments  
47 for the distribution of marital property, in such proportion as  
48 the court shall direct: *Provided, however*, That if the court  
49 does not set forth in the order that a portion of such payments  
50 is to be deemed child support or installment payments for the  
51 distribution of marital property, then all such payments made  
52 pursuant to this subdivision shall be deemed to be alimony:  
53 *Provided further*, That the designation of insurance coverage as  
54 alimony under the provisions of this subdivision shall not, in  
55 and of itself, give rise to a subsequent modification of the order  
56 to provide for alimony other than insurance for covering the  
57 costs of health care and hospitalization.

58 (4) As an incident to requiring the payment of alimony or  
59 child support, the court may grant the exclusive use and occu-  
60 pancy of the marital home to one of the parties, together with  
61 all or a portion of the household goods, furniture and furnish-

62 ings reasonably necessary for such use and occupancy. Such  
63 use and occupancy shall be for a definite period, ending at a  
64 specific time set forth in the order, subject to modification up-  
65 on the petition of either party. Except in extraordinary cases  
66 supported by specific findings set forth in the order granting  
67 relief, a grant of the exclusive use and occupancy of the marital  
68 home shall be limited to those situations where such use and  
69 occupancy is reasonably necessary to accommodate the rearing  
70 of minor children of the parties. The court may require pay-  
71 ments to third parties in the form of home loan installments,  
72 land contract payments, rent, payments for utility services,  
73 property taxes, insurance coverage, or other expenses or charg-  
74 es reasonably necessary for the use and occupancy of the mari-  
75 tal domicile. Payments made to a third party pursuant to this  
76 subdivision for the benefit of the other party shall be deemed  
77 to be alimony, child support or installment payments for the  
78 distribution of marital property, in such proportion as the court  
79 shall direct: *Provided*, That if the court does not set forth in  
80 the order that a portion of such payments is to be deemed child  
81 support or installment payments for the distribution of marital  
82 property, then all such payments made pursuant to this sub-  
83 division shall be deemed to be alimony. Nothing contained in  
84 this subdivision shall abrogate an existing contract between  
85 either of the parties and a third party, or affect the rights and  
86 liabilities of either party or a third party under the terms of  
87 such contract.

88 (5) As an incident to requiring the payment of alimony,  
89 the court may grant the exclusive use and possession of one or  
90 more motor vehicles to either of the parties. The court may  
91 require payments to third parties in the form of automobile  
92 loan installments or insurance coverage, and any such pay-  
93 ments made pursuant to this subdivision for the benefit of the  
94 other party shall be deemed to be alimony or installment pay-  
95 ments for the distribution of marital property, as the court may  
96 direct. Nothing contained in this subsection shall abrogate an  
97 existing contract between either of the parties and a third  
98 party, or affect the rights and liabilities of either party or a  
99 third party under the terms of such contract.

100 (6) Where the pleadings include a specific request for

101 specific property or raise issues concerning the equitable divi-  
102 sion of marital property as defined in section one of this ar-  
103 ticle, the court shall order such relief as may be required to  
104 effect a just and equitable distribution of the property and to  
105 protect the equitable interests of the parties therein.

106 (7) Unless a contrary disposition be found appropriate and  
107 ordered pursuant to other provisions of this section, then upon  
108 the motion of either party, the court may compel the other  
109 party to deliver to the movant party any of his or her separate  
110 estate which may be in the possession or control of the respon-  
111 dent party, and may make such further order as is necessary to  
112 prevent either party from interfering with the separate estate  
113 of the other.

114 (8) The court may enjoin either party from the molesting or  
115 interfering with the other, or otherwise imposing any restraint  
116 on the personal liberty of the other, or interfering with the  
117 custodial or visitation rights of the other.

118 (9) The court may order either party to take necessary  
119 steps to transfer utility accounts and other accounts for re-  
120 curring expenses from the name of one party into the name of  
121 the other party or from the joint names of the parties into the  
122 name of one party. Nothing contained in this subdivision shall  
123 affect the liability of the parties for indebtedness on any such  
124 account incurred before the transfer of such account.

125 (c) In any case where an annulment or divorce is denied,  
126 the court shall retain jurisdiction of the case and may order all  
127 or any portion of the relief provided for in subsections (a) and  
128 (b) of this section which has been demanded or prayed for in  
129 the pleadings.

130 (d) In any case where a divorce or annulment is granted in  
131 this state upon constructive service of process, and personal  
132 jurisdiction is thereafter obtained of the defendant in such  
133 case, the court may order all or any portion of the relief pro-  
134 vided for in subsections (a) and (b) of this section which has  
135 been demanded or prayed for in the pleadings.

136 (e) At any time after the entry of an order pursuant to the  
137 provisions of this section, the court may, upon the verified

138 petition of either of the parties, revise or alter such order  
139 concerning the maintenance of the parties, or either of them,  
140 and make a new order concerning the same, as the altered  
141 circumstances or needs of the parties may render necessary to  
142 meet the ends of justice; and the court may also from time to  
143 time afterward, on the verified petition of either of the parties  
144 or other proper person having actual or legal custody of the  
145 minor child or children of the parties, revise or alter such order  
146 concerning the custody and maintenance of the children, and  
147 make a new order concerning the same, as the circumstances  
148 of the parents or other proper person or persons and the benefit  
149 of the children may require. In granting such relief, the  
150 court may, where other means are not conveniently available,  
151 alter any prior order of the court with respect to the distribu-  
152 tion of marital property, if such property is still held by the  
153 parties, and if necessary to give effect to a modification of ali-  
154imony, child support or child custody or necessary to avoid an  
155 inequitable or unjust result which would be caused by the  
156 manner in which the modification will affect the prior distri-  
157bution of marital property.

158 (f) In every case where a separation agreement is the basis  
159 for an award of alimony, the court, in approving the agree-  
160ment, shall examine the agreement to ascertain whether it  
161 clearly provides for alimony to continue beyond the death of  
162 the payor party or to cease in such event. Where alimony is to  
163 be paid pursuant to the terms of a separation agreement which  
164 does not state whether the payment of alimony is to continue  
165 beyond the death of the payor party or is to cease, or where  
166 the parties have not entered into a separation agreement and  
167 alimony is to be awarded, the court shall specifically state as  
168 a part of its order whether such payments of alimony are to be  
169 continued beyond the death of the payor party or cease.

170 (g) In every case where a separation agreement is the basis  
171 for an award of alimony, the court, in approving the agree-  
172ment, shall examine the agreement to ascertain whether it  
173 clearly provides for alimony to continue beyond the remar-  
174riage of the payee party or to cease in such event. Where ali-  
175mony is to be paid pursuant to the terms of a separation agree-  
176ment which does not state whether the payment of alimony is



177 to continue beyond the remarriage of the payee party or is to  
178 cease, or where the parties have not entered into a separation  
179 agreement and alimony is to be awarded, the court shall speci-  
180 fically state as a part of its order whether such payments of  
181 alimony are to be continued beyond the remarriage of the  
182 payee party or cease.

183 (h) In addition to the statement provided for in subsection  
184 (d), section thirteen of this article and in addition or in lieu  
185 of the disclosure requirements set forth in section thirty-three  
186 of this article, the court may order accounts to be taken as to  
187 all or any part of marital property or the separate estates of  
188 the parties, and may direct that the accounts be taken as of the  
189 date of the marriage, the date upon which the parties separated,  
190 or any other time deemed to be appropriate in assisting the  
191 court in the determination and equitable division of property.

192 (i) In determining whether alimony is to be awarded, or in  
193 determining the amount of alimony, if any, to be awarded und-  
194 er the provisions of this section, the court shall consider and  
195 compare the fault or misconduct of either or both of the parties  
196 and the effect of such fault or misconduct as a contributing  
197 factor to the deterioration of the marital relationship. However,  
198 alimony shall not be awarded in any case where both parties  
199 prove grounds for divorce and are denied a divorce, nor shall  
200 an award of alimony under the provisions of this section be  
201 ordered which directs the payment of alimony to a party de-  
202 termined to be at fault, when, as a grounds granting the di-  
203 vorce, such party is determined by the court:

204 (1) To have committed adultery; or

205 (2) To have been convicted for the commission of a crime  
206 which is a felony, subsequent to the marriage. If such convic-  
207 tion has become final; or

208 (3) To have actually abandoned or deserted his or her  
209 spouse for six months.

210 (j) Whenever under the terms of this section or section  
211 thirteen of this article a court enters an order requiring the  
212 payment of alimony or child support, if the court anticipates  
213 the payment of such alimony or child support or any portion

214 thereof to be paid out of "disposable retired or retainer pay"  
215 as that term is defined in 10 U.S.C. §1408, relating to mem-  
216 bers or former members of the uniformed services of the Uni-  
217 ted States, the court shall specifically provide for the payment  
218 of an amount, expressed in dollars or as a percentage of dis-  
219 posable retired or retainer pay, from the disposable retired or  
220 retainer pay of the payor party to the payee party.

**§48-2-16. Effect of separation agreement; what considered in  
awarding alimony, child support or separate main-  
tenance.**

1 (a) In cases where the parties to an action commenced  
2 under the provisions of this article have executed a separation  
3 agreement, if the court finds that the agreement is fair and  
4 reasonable, and not obtained by fraud, duress or other uncon-  
5 scionable conduct by one of the parties, and further finds that  
6 the parties, through the separation agreement, have expressed  
7 themselves in terms which, if incorporated into a judicial order,  
8 would be enforceable by a court in future proceedings, then the  
9 court shall conform the relief which it is authorized to order  
10 under the provisions of sections thirteen and fifteen of this  
11 article to the separation agreement of the parties. The separa-  
12 tion agreement may contractually fix the division of property  
13 between the parties and may determine whether alimony shall  
14 be awarded, whether a court shall have continuing jurisdiction  
15 over the amount of an alimony award so as to increase or de-  
16 crease the amount of alimony to be paid, whether alimony shall  
17 be awarded as a lump sum settlement in lieu of periodic pay-  
18 ments, whether alimony shall continue beyond the death of  
19 the payor party or the remarriage of the payee party,  
20 or whether the alimony award shall be enforceable by con-  
21 tempt proceedings or other judicial remedies aside from  
22 contractual remedies. Any award of periodic payments of  
23 alimony shall be deemed to be judicially decreed and subject  
24 to subsequent modification unless there is some explicit, well  
25 expressed, clear, plain and unambiguous provision to the  
26 contrary set forth in the court approved separation agreement  
27 or the order granting the divorce. Child support shall, under  
28 all circumstances, always be subject to continuing judicial  
29 modification.

30 (b) In cases where the parties to an action commenced  
31 under the provisions of this article have not executed a separa-  
32 tion agreement, or have executed an agreement which is  
33 incomplete or insufficient to resolve the outstanding issues be-  
34 tween the parties, or where the court finds the separation  
35 agreement of the parties not to be fair and reasonable or  
36 clear and unambiguous, the court shall proceed to resolve the  
37 issues outstanding between the parties. The court shall consider  
38 the following factors in determining the amount of alimony,  
39 child support or separate maintenance, if any, to be ordered  
40 under the provisions of sections thirteen and fifteen of this  
41 article, as a supplement to or in lieu of the separation agree-  
42 ment:

43 (1) The length of time the parties were married;

44 (2) The period of time during the marriage when the  
45 parties actually lived together as husband and wife;

46 (3) The present employment income and other recurring  
47 earnings of each party from any source;

48 (4) The income-earning abilities of each of the par-  
49 ties, based upon such factors as educational background, train-  
50 ing, employment skills, work experience, length of absence  
51 from the job market and custodial responsibilities for chil-  
52 dren;

53 (5) The distribution of marital property to be made  
54 under the terms of a separation agreement or by the court  
55 under the provisions of section thirty-two of this article,  
56 insofar as the distribution affects or will affect the earnings  
57 of the parties and their ability to pay or their need to receive  
58 alimony, child support or separate maintenance;

59 (6) The ages and the physical, mental and emotional  
60 condition of each party;

61 (7) The educational qualifications of each party;

62 (8) The likelihood that the party seeking alimony, child  
63 support or separate maintenance can substantially increase  
64 his or her income-earning abilities within a reasonable time by  
65 acquiring additional education or training;

- 66 (9) The anticipated expense of obtaining the education  
67 and training described in subdivision (8) above;
- 68 (10) The costs of educating minor children;
- 69 (11) The costs of providing health care for each of the  
70 parties and their minor children;
- 71 (12) The tax consequences to each party;
- 72 (13) The extent to which it would be inappropriate for  
73 a party, because said party will be the custodian of a minor  
74 child or children, to seek employment outside the home;
- 75 (14) The financial need of each party;
- 76 (15) The legal obligations of each party to support him-  
77 self or herself and to support any other person; and
- 78 (16) Such other factors as the court deems necessary or  
79 appropriate to consider in order to arrive at a fair and equitable  
80 grant of alimony, child support or separate maintenance.

**§48-2-17. Recordation of an abstract of an order for alimony,  
child support or separate maintenance.**

1 An order for alimony, child support or separate main-  
2 tenance shall not give rise to a lien on any real estate of  
3 the person against whom the order is entered until the pro-  
4 cedures set forth in this section are complied with. An  
5 abstract of the order may be recorded in the office of the  
6 clerk of the county commission in the county wherein such  
7 real property is situate without constituting a lien against  
8 such real property, until the person entitled to receive such  
9 alimony, child support or separate maintenance presents  
10 for recordation with the clerk an affidavit which sets forth  
11 allegations that the person required to pay such alimony,  
12 child support or separate maintenance is in arrears in such  
13 payment for a period of not less than thirty days.

14 The abstract of the order and the affidavit shall be re-  
15 corded in the same manner as other abstracts of judgments  
16 are recorded, but shall not constitute a lien unless both the  
17 abstract and affidavit are recorded. The abstract of judgment  
18 shall contain the name of the parties to the action in which

19 the order of alimony, child support or separate maintenance  
20 was entered, the name of the party in whose favor such  
21 award was made, the date of the judgment and the court  
22 which rendered such judgment. In no event shall the judg-  
23 ment order, in its entirety, be recorded. Unless a proceeding  
24 for the enforcement of the order for support, maintenance  
25 or alimony or the collection thereof be commenced or brought  
26 within sixty days of the recordation of such affidavit, the  
27 lien created by such recorded affidavit shall be discharged  
28 and extinguished. If the proceeding be brought in a county  
29 other than the county wherein the original judgment was  
30 rendered or wherein the abstract or affidavit was recorded,  
31 then notice of the bringing of such proceeding shall be  
32 recorded in the same county and in the same manner as the  
33 abstract and affidavit were recorded. The lien created by such  
34 recording shall be effective as to the amount of any judgment  
35 rendered in such proceeding regardless of whether such judg-  
36 ment be for less or more than prayed for.

37 The provisions of this section restricting the right of recorda-  
38 tion of judgment orders shall not be deemed to limit the  
39 right of any person to record a judgment for a sum certain for  
40 past-due alimony, child support or separate maintenance.

**§48-2-22. Proceedings in contempt.**

1 (a) Upon a verified petition for contempt, notice of hear-  
2 ing and hearing, if the petition alleges criminal contempt  
3 or the court informs the parties that the matter will be treated  
4 and tried as a criminal contempt, the matter shall be tried  
5 before a jury, unless the party charged with contempt shall  
6 knowingly and intelligently waive the right to a jury trial with  
7 the consent of the court and the other party. If the jury, or  
8 the court sitting without a jury, shall find the defendant in  
9 contempt for willfully failing to comply with an order of the  
10 court made pursuant to the provisions of this article, as charged  
11 in the petition, the court may find the person to be in criminal  
12 contempt and may commit such person to the county jail for  
13 a determinate period not to exceed six months.

14 (b) If trial is had under the provisions of subsection (a)  
15 of this section and the court elects to treat a finding of

16 criminal contempt as a civil contempt, or if the petition alleges  
17 civil contempt and the matter is not tried before a jury and the  
18 court finds the defendant in contempt for willfully failing to  
19 comply with an order of the court made pursuant to the pro-  
20 visions of this article, and if the court further finds the per-  
21 son has the ability to purge himself of contempt, the court  
22 shall afford the contemnor a reasonable time and method  
23 whereby he may purge himself of contempt. If the contemnor  
24 fails or refuses to purge himself of contempt, the court may  
25 confine the contemnor to the county jail for an indeterminate  
26 period not to exceed six months or until such time as the  
27 contemnor has purged himself, whichever shall first occur.

28 (c) In the case of a charge of contempt based upon the  
29 failure of the defendant to pay alimony, child support or sep-  
30 arate maintenance, if the court or jury finds that the defendant  
31 did not pay because he was financially unable to pay, the  
32 defendant may not be imprisoned on charges of contempt of  
33 court.

34 (d) Regardless of whether the court or jury finds the  
35 defendant to be in contempt, if the court shall find that a  
36 party is in arrears in the payment of alimony, child support  
37 or separate maintenance ordered to be paid under the pro-  
38 visions of this article, the court shall enter judgment for such  
39 arrearage and award interest on such arrearage from the due  
40 date of each unpaid installment. Following any hearing  
41 wherein the court finds that a party is in arrears in the payment  
42 of alimony, child support or separate maintenance, the court  
43 may, if sufficient assets exist, require security to ensure the  
44 timely payment of future installments.

45 (e) At any time during a contempt proceeding, the court  
46 may enter an order to attach forthwith the body of, and take  
47 into custody, any person who refuses or fails to respond  
48 to the lawful process of the court or to comply with an order  
49 of the court. Such order of attachment shall require the per-  
50 son to be brought forthwith before the court or the judge  
51 thereof in any county in which the court may then be sitting.

**§48-2-32. Marital property disposition.**

1 (a) Except as otherwise provided in this section, upon

2 every judgment of annulment, divorce or separation, the court  
3 shall divide the marital property of the parties equally be-  
4 tween the parties.

5 (b) In cases where the parties to an action commenced  
6 under the provisions of this article have executed a sepa-  
7 ration agreement, then the court shall divide the marital  
8 property in accordance with the terms of the agreement, un-  
9 less the court finds:

10 (1) That the agreement was obtained by fraud, duress,  
11 or other unconscionable conduct by one of the parties, or

12 (2) That the parties, in the separation agreement, have  
13 not expressed themselves in terms which, if incorporated into  
14 a judicial order, would be enforceable by a court in future  
15 proceedings, or

16 (3) That the agreement, viewed in the context of the actual  
17 contributions of the respective parties to the net value of the  
18 marital property of the parties, is so inequitable as to defeat  
19 the purposes of this section, and such agreement was inequit-  
20 able at the time the same was executed.

21 (c) In the absence of a valid agreement, the court shall  
22 presume that all marital property is to be divided  
23 equally between the parties, but may alter this distribution,  
24 without regard to any attribution of fault to either party  
25 which may be alleged or proved in the course of the action,  
26 after a consideration of the following:

27 (1) The extent to which each party has contributed to the  
28 acquisition, preservation and maintenance, or increase in  
29 value of marital property by monetary contributions, in-  
30 cluding, but not limited to:

31 (A) Employment income and other earnings; and

32 (B) Funds which are separate property.

33 (2) The extent to which each party has contributed to  
34 the acquisition, preservation and maintenance, or increase  
35 in value of marital property by nonmonetary contributions,  
36 including, but not limited to:

37 (A) Homemaker services;

38 (B) Child care services;

39 (C) Labor performed without compensation, or for less  
40 than adequate compensation, in a family business or other  
41 business entity in which one or both of the parties has an  
42 interest;

43 (D) Labor performed in the actual maintenance or im-  
44 provement of tangible marital property; and

45 (E) Labor performed in the management or investment of  
46 assets which are marital property.

47 (3) The extent to which each party expended his or her  
48 efforts during the marriage in a manner which limited or  
49 decreased such party's income-earning ability or increased  
50 the income-earning ability of the other party, including, but  
51 not limited to:

52 (A) Direct or indirect contributions by either party to the  
53 education or training of the other party which has increased  
54 the income-earning ability of such other party; and

55 (B) Foregoing by either party of employment or other  
56 income-earning activity through an understanding of the par-  
57 ties or at the insistence of the other party.

58 (4) The extent to which each party, during the marriage,  
59 may have conducted himself or herself so as to dissipate or  
60 depreciate the value of the marital property of the parties:  
61 *Provided*, That except for a consideration of the economic  
62 consequences of conduct as provided for in this subdivision,  
63 fault or marital misconduct shall not be considered by the  
64 court in determining the proper distribution of marital property.

65 (d) After considering the factors set forth in subsection  
66 (c) of this section, the court shall:

67 (1) Determine the net value of all marital property of  
68 the parties as of the date of the commencement of the action  
69 or as of such later date determined by the court to be more  
70 appropriate for attaining an equitable result;

71 (2) Designate the property which constitutes marital prop-



72 erty, and define the interest therein to which each party is  
73 entitled and the value of their respective interest therein. In  
74 the case of an action wherein there is no agreement between  
75 the parties and the relief demanded requires the court to  
76 consider such factors as are described in subdivisions one,  
77 two, three and four, subsection (c) of this section, if a con-  
78 sideration of factors only under said subdivisions one and  
79 two would result in an unequal division of marital property,  
80 and if an examination of the factors described in said sub-  
81 divisions three and four produce a finding that a party (A)  
82 expended his or her efforts during the marriage in a manner  
83 which limited or decreased such party's income-earning ability  
84 or increased the income-earning ability of the other party, or  
85 (B) conducted himself or herself so as to dissipate or depre-  
86 ciate the value of the marital property of the parties, then  
87 the court may, in the absence of a fair and just alimony  
88 award under the provisions of section fifteen of this article  
89 which adequately takes into account the facts which under-  
90 lie the factors described in said subdivisions three and  
91 four, equitably adjust the definition of the parties' interest  
92 in marital property, increasing the interest in marital property  
93 of a party adversely affected by the factors considered under  
94 said subdivisions three and four who would otherwise be  
95 awarded less than one half of the marital property, to an  
96 interest not to exceed one half of the marital property;

97 (3) Designate the property which constitutes separate prop-  
98 erty of the respective parties or the separate property of their  
99 children;

100 (4) Determine the extent to which marital property is  
101 susceptible to division in accordance with the findings of the  
102 court as to the respective interests of the parties therein;

103 (5) In the case of any property which is not susceptible  
104 to division, ascertain the projected results of a sale of such  
105 property;

106 (6) Ascertain the projected effect of a division or trans-  
107 fer of ownership of income-producing property, in terms of  
108 the possible pecuniary loss to the parties or other persons  
109 which may result from an impairment of the property's capa-  
110 city to generate earnings; and

111 (7) Transfer title to such component parts of the marital  
112 property as may be necessary to achieve an equitable distribu-  
113 tion of the marital property. To make such equitable distribu-  
114 tion, the court may:

115 (A) Direct either party to transfer their interest in specific  
116 property to the other party;

117 (B) Permit either party to purchase from the other party  
118 their interest in specific property;

119 (C) Direct either party to pay a sum of money to the  
120 other party in lieu of transferring specific property or an in-  
121 terest therein, if necessary to adjust the equities and rights of  
122 the parties, which sum may be paid in installments or other-  
123 wise, as the court may direct;

124 (D) Direct a party to transfer his or her property to the  
125 other party in substitution for property of the other party of  
126 equal value which the transferor is permitted to retain and  
127 assume ownership of;

128 (E) Order a sale of specific property and an appropriate  
129 division of the net proceeds of such sale: *Provided*, That such  
130 sale may be by private sale, or through an agent, or by judicial  
131 sale, whichever would facilitate a sale within a reasonable  
132 time at a fair price.

133 (e) In order to achieve the equitable distribution of marital  
134 property, the court shall, unless the parties otherwise agree,  
135 order, when necessary, the transfer of legal title to any prop-  
136 erty of the parties, giving preference to effecting equitable  
137 distribution through periodic or lump sum payments: *Provid-*  
138 *ed*, That the court may order the transfer of legal title to motor  
139 vehicles, household goods and the former marital domicile  
140 without regard to such preference where the court determines  
141 it to be necessary or convenient. In any case involving the  
142 equitable distribution of (1) property acquired by bequest,  
143 devise, descent, distribution or gift, or (2) ownership interests  
144 in a business entity, the court shall, unless the parties other-  
145 wise agree, give preference to the retention of the ownership  
146 interests in such property. In the case of such business inter-  
147 ests, the court shall give preference to the party having the

148 closer involvement, larger ownership interest or greater depen-  
149 dency upon the business entity for income or other resources  
150 required to meet responsibilities imposed under this article,  
151 and shall also consider the effects of transfer or retention in  
152 terms of which alternative will best serve to preserve the value  
153 of the business entity or protect the business entity from undue  
154 hardship or from interference caused by one of the parties or  
155 by the divorce, annulment or decree of separate maintenance:  
156 *Provided*, That the court may, unless the parties otherwise  
157 agree, sever the business relationship of the parties and order  
158 the transfer of legal title to ownership interests in the business  
159 entity from one party to the other, without regard to the limi-  
160 tations on the transfer of title to such property otherwise pro-  
161 vided in this subsection, if such transfer is required to achieve  
162 the other purposes of this article: *Provided, however*, That in  
163 all such cases the court shall order or the agreement of the  
164 parties shall provide for equitable payment or transfer of legal  
165 title to other property, of fair value in money or money's  
166 worth, in lieu of any ownership interests in a business entity  
167 which are ordered to be transferred under this subsection:  
168 *Provided further*, That the court may order the transfer of  
169 such business interests to a third party (such as the business  
170 entity itself or another principal in the business entity) where  
171 the interests of the parties under this article can be protected  
172 and at least one party consents thereto.

173 (f) In any order which divides or transfers the title to any  
174 property, determines the ownership or value of any property,  
175 designates the specific property to which any party is entitled,  
176 or grants any monetary award, the court shall set out in detail  
177 its findings of fact and conclusions of law, and the reasons for  
178 dividing the property in the manner adopted.

179 (g) If an order entered in accordance with the provisions  
180 of this article requires the transfer of title to property and a  
181 party fails or refuses to execute a deed or other instrument  
182 necessary to convey title to such property, the deed or other  
183 instrument shall be executed by a special commissioner ap-  
184 pointed by the court for the purpose of effecting such transfer  
185 of title pursuant to section seven, article twelve, chapter fifty-  
186 five of this code.

187 (h) As to any third party, the doctrine of equitable distri-  
188 bution of marital property and the provisions of this article  
189 shall be construed as creating no interest or title in property  
190 until and unless an order is entered under this article judicially  
191 defining such interest or approving a separation agreement  
192 which defines such interest. Neither this article nor the doc-  
193 trine of equitable distribution of marital property shall be  
194 construed to create community property nor any other interest  
195 or estate in property except those previously recognized in this  
196 state. A husband or wife may alienate property at any time  
197 prior to the entry of an order under the provisions of this ar-  
198 ticle or prior to the recordation of a notice of lis pendens in ac-  
199 cordance with the provisions of section thirty-five of this  
200 article, and at anytime and in any manner not otherwise pro-  
201 hibited by an order under this article, in like manner and with  
202 like effect as if this article and the doctrine of equitable distri-  
203 bution had not been adopted: *Provided*, That as to any trans-  
204 fer prior to the entry of an order under the provisions of this  
205 article, a transfer other than to a bona fide purchaser for value  
206 shall be voidable if the court finds such transfer to have been  
207 effected to avoid the application of the provisions of this article  
208 or to otherwise be a fraudulent conveyance. Upon the entry of  
209 any order under this article or the admission to record of any  
210 notice with respect to an action under this article, restraining  
211 the alienation of property of a party, a bona fide purchaser  
212 for value shall take such title or interest as he or she might  
213 have taken prior to the effective date of this section and no  
214 purchaser for value need see to the application of the proceeds  
215 of such purchase except to the extent he or she would have  
216 been required so to do prior to the effective date of this sec-  
217 tion: *Provided, however*, That as to third parties nothing in this  
218 section shall be construed to limit or otherwise defeat the inter-  
219 ests or rights to property which any husband or wife would  
220 have had in property prior to the enactment of this section or  
221 prior to the adoption of the doctrine of equitable distribution  
222 by the supreme court of appeals on the twenty-fifth day of May,  
223 one thousand nine hundred eighty-three: *Provided further*,  
224 That no order entered under this article shall be construed to  
225 defeat the title of a third party transferee thereof except to the  
226 extent that the power to effect such a transfer of title or interest

227 in such property is secured by a valid and duly perfected lien  
228 and, as to any personal property, secured by a duly perfected  
229 security interest.

230 (i) Notwithstanding the provisions of chapter eleven of  
231 this code, no transfer of interest in or title to property under  
232 this section shall be taxable as a transfer of property without  
233 consideration nor, except as to alimony, create liability for  
234 sales, use, inheritance and transfer, or income taxes due the  
235 state or any political subdivision nor require the payment of the  
236 excise tax imposed under article twenty-two of said chapter  
237 eleven.

238 (j) Whenever under the terms of this article a court enters  
239 an order requiring a division of property, if the court antici-  
240 pates the division of property will be effected by requiring sums  
241 to be paid out of "disposable retired or retainer pay" as that  
242 term is defined in 10 U.S.C. §1408, relating to members or  
243 former members of the uniformed services of the United States,  
244 the court shall specifically provide for the payment of an  
245 amount, expressed in dollars or as a percentage of disposable  
246 retired or retainer pay, from the disposable retired or retainer  
247 pay of the payor party to the payee party.

#### §48-2-33. Disclosure of assets required.

1 (a) In addition to any discovery ordered by the court  
2 pursuant to rule eighty-one of the rules of civil procedure, the  
3 court may, or upon pleadings or motion of either party the  
4 court shall, require each party to furnish, on such standard  
5 forms as the court may require, full disclosure of all  
6 assets owned in full or in part by either party separately  
7 or by the parties jointly. Such disclosure may be made  
8 by each party individually or by the parties jointly.  
9 Assets required to be disclosed shall include, but shall not  
10 be limited to, real property, savings accounts, stocks  
11 and bonds, mortgages and notes, life insurance, interest in  
12 a partnership or corporation, tangible personal property,  
13 income from employment, future interests whether vested  
14 or nonvested, and any other financial interest or source.  
15 The court may also require each party to furnish, on  
16 the same standard form, information pertaining to all debts

17 and liabilities of the parties. The form used shall contain a  
18 statement in conspicuous print that complete disclosure of  
19 assets and debts is required by law and deliberate failure to  
20 provide complete disclosure as ordered by the court constitutes  
21 false swearing. The court may on its own initiative and shall  
22 at the request of either party require the parties to furnish  
23 copies of all state and federal income tax returns filed by them  
24 for the past two years, and may require copies of such re-  
25 turns for prior years.

26 (b) Disclosure forms required under this section shall  
27 be filed within sixty days after the service of summons or at  
28 such other time as ordered by the court. Information con-  
29 tained on such forms shall be updated on the record to the  
30 date of hearing.

31 (c) Information disclosed under this section shall be con-  
32 fidential and may not be made available to any person for any  
33 purpose other than the adjudication, appeal, modification or  
34 enforcement of judgment of an action affecting the family of the  
35 disclosing parties. The court shall include in any order  
36 compelling disclosure of assets, such provisions as the court  
37 considers necessary to preserve the confidentiality of the  
38 information ordered disclosed.

39 (d) Upon the failure by either party timely to file  
40 a complete disclosure statement as may be required by this  
41 section, the court may accept the statement of the other party  
42 as accurate.

43 (e) If any party deliberately or negligently fails to dis-  
44 close information which may be required by this section and in  
45 consequence thereof any asset or assets with a fair market value  
46 of five hundred dollars or more is omitted from the final  
47 distribution of property, the party aggrieved by such non-  
48 disclosure may at any time petition a court of competent  
49 jurisdiction to declare the creation of a constructive trust as  
50 to all undisclosed assets, for the benefit of the parties and  
51 their minor or dependent children, if any, with the party in  
52 whose name the assets are held declared the constructive  
53 trustee, such trust to include such terms and conditions as the

54 court may determine. The court shall impose the trust upon  
55 a finding of a failure to disclose such assets as required under  
56 this section.

57 (f) Any assets with a fair market value of five hundred  
58 dollars or more which would be considered part of the  
59 estate of either or both of the parties if owned by either or  
60 both of them at the time of the action, but which was trans-  
61 ferred for inadequate consideration, wasted, given away or  
62 otherwise unaccounted for by one of the parties, within five  
63 years prior to the filing of the petition or length of the mar-  
64 riage, whichever is shorter, shall be presumed to be part of  
65 the estate and shall be subject to the disclosure requirement  
66 contained in this section. With respect to such transfers the  
67 spouse shall have the same right and remedies as a creditor  
68 whose debt was contracted at the time the transfer was made  
69 under section three, article one, chapter forty of this code.  
70 Transfers which resulted in an exchange of assets of sub-  
71 stantially equivalent value need not be specifically disclosed  
72 where such assets are otherwise identified in the statement  
73 of net worth.

74 (g) Deliberate failure to provide the disclosure required  
75 by the court pursuant to the provisions of this section is false  
76 swearing.

**§48-2-34. Injunction against disposition of property pending suit  
and decree rendering fraudulent transfers null and  
void.**

1 (a) Where it appears to the court that a party is about  
2 to remove himself or herself or his or her property from  
3 the jurisdiction of the court or is about to dispose of, alienate  
4 or encumber property in order to defeat a fair distribution of  
5 marital property, or the payment of alimony, child support or  
6 separate maintenance, an injunction may issue to prevent such  
7 removal or disposition and such property may be attached as  
8 provided by this code. The court may issue such injunction  
9 or attachment without bond.

10 (b) Any such injunction may be granted upon proper

11 hearing after notice. For good cause shown, a temporary  
12 injunction may be issued after an ex parte proceeding with  
13 notice and proper hearing for a permanent injunction to be  
14 held forthwith thereafter.

15 (c) The procedures of this section are not intended to  
16 apply to the sale of goods in the ordinary course of operating  
17 a business but shall apply to the disposition of the major  
18 assets of a business.

19 (d) Any encumbrance or disposition of property to third  
20 persons, except to bona fide purchasers without notice for  
21 full and adequate consideration, may be set aside by the court.

#### §48-2-35. *Lis pendens.*

1 Upon the commencement of an action under the provisions  
2 of this article, any party claiming an interest in real property  
3 in which the other party has an interest, may cause a notice  
4 of *lis pendens* to be recorded in the office of the clerk of the  
5 county commission of the county wherein the property is  
6 located.

7 The notice shall contain the names of the parties, the  
8 nature of the complaint, the court having jurisdiction, the  
9 date the complaint was filed, and a description of the real  
10 property. Such notice shall, from the time of the recording  
11 only, be notice to any person thereafter acquiring any interest  
12 in such property of the pendency of the complaint. Each  
13 person whose conveyance or encumbrance is subsequently  
14 executed or subsequently recorded or whose interest is there-  
15 after acquired by descent, or otherwise, shall be deemed to  
16 be a subsequent purchaser or encumbrancer, and shall be  
17 bound by all proceedings taken after the recording of such  
18 notice, to the same extent as if he were made a party to the  
19 complaint. A notice of *lis pendens* recorded in accordance  
20 with this section may be discharged by the court upon sub-  
21 stitution of a bond with surety in an amount established by  
22 the court, if the court finds that the claim against the property  
23 subject to the notice of *lis pendens* can be satisfied by a mone-  
24 tary award. In cases in which the sale of property is already



25 in process when the notice of lis pendens is filed, and upon  
26 application, proper notice and hearing, the court may substi-  
27 tute a lien on the net proceeds of the sale.

**§48-2-36. Retroactive effect of amendments.**

1 Amendments made to the provisions of this article during  
2 the regular session of the Legislature in the year one thousand  
3 nine hundred eighty-four shall be of retroactive effect to the  
4 extent that such amended provisions shall apply to the distri-  
5 bution of marital property, but not an award of alimony, in  
6 all actions filed under the provisions of this article after the  
7 twenty-fifth day of May, one thousand nine hundred eighty-  
8 three, or actions pending on that date in which a claim for  
9 equitable distribution of marital property had been pleaded:  
10 *Provided*, That such amendments to the provisions of this  
11 article shall not, in any case, be applicable to actions filed un-  
12 der the provisions of this article in which, prior to the effec-  
13 tive date of the act of the Legislature enacting such amend-  
14 ments, (1) there has been a final decree entered under the  
15 provisions of section fifteen of this article, or (2) the taking of  
16 evidence has been completed and the case has been submitted  
17 for decision.

**ARTICLE 3. PROPERTY, RIGHTS AND LIABILITIES OF MARRIED  
WOMEN; HUSBAND AND WIFE.**

**§48-3-10. Presumption of gift in certain transactions between hus-  
band and wife.**

1 Where one spouse purchases real or personal property and  
2 pays for the same, but takes title in the name of the other  
3 spouse, such transaction shall, in the absence of evidence of a  
4 contrary intention, be presumed to be a gift by the spouse so  
5 purchasing to the spouse in whose name the title is taken:  
6 *Provided*, That in the case of an action under the provisions of  
7 article two of this chapter wherein the court is required to  
8 determine what property of the parties constitutes marital  
9 property and equitably divide the same, the presumption  
10 created by this section shall not apply, and a gift between  
11 spouses must be affirmatively proved.

## CHAPTER 61

(Com. Sub. for H. B. 1213—By Delegate Hartman)

[Passed February 29, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-two, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-five, article eleven of said chapter; and to amend and reenact section twenty-six, article twenty-six of said chapter, all relating to parking facilities or areas at state colleges and universities; issuing revenue bonds for construction and acquisition of same; establishing civil and criminal penalties for offenses; and authorizing removal of unauthorized vehicles.

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

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

### Article

11. West Virginia University.

26. West Virginia Board of Regents.

### ARTICLE 11. WEST VIRGINIA UNIVERSITY.

#### §18-11-25. Financing of parking facilities or areas.

1 In addition to the provisions of section twenty-six, article  
2 twenty-six, chapter eighteen of this code, the board of  
3 regents may from time to time issue revenue bonds of the  
4 state as provided in this section to finance the construction  
5 of additional parking facilities or the acquisition by lease  
6 or purchase of additional parking areas and pledge all or  
7 any part of the moneys in such special funds for the pay-  
8 ment of the principal of and interest on such revenue bonds,  
9 and for reserves therefor. Whenever parking facilities are  
10 provided in any university building financed in whole or  
11 in part by the issue of revenue bonds otherwise authorized

12 by law, the net revenue derived from the parking facilities  
13 included in such building may be used or pledged to meet the  
14 sinking fund requirements of the bonds issued for con-  
15 struction of the buildings. The pledge of moneys in such  
16 special fund for any revenue bonds shall be a prior and  
17 superior charge on such special fund over the use of any of  
18 the moneys in such fund to pay for the cost of any of such  
19 purposes on a cash basis.

20 Such revenue bonds may be authorized and issued from  
21 time to time by the board of regents to finance in whole or  
22 in part the purposes provided in this section in an ag-  
23 gregate principal amount not exceeding the amount which  
24 the board shall determine can be paid as to both principal  
25 and interest and reasonable margins for a reserve therefor  
26 from the moneys in such special fund.

27 The issuance of such bonds shall be authorized by a  
28 resolution adopted by the board, and such revenue bonds  
29 shall bear such date or dates; mature at such times not  
30 exceeding forty years from their respective dates; bear in-  
31 terest at such rate or rates, not exceeding twelve per centum  
32 per annum; be in such form either coupon or registered,  
33 with such exchangeability and interchangeability privileges;  
34 be payable in such medium of payment and at such place  
35 or places, within or without the state; be subject to such  
36 terms of prior redemption at such prices not exceeding  
37 one hundred six per centum of the principal amount thereof;  
38 and shall have such other terms and provisions as the board  
39 shall determine. Such revenue bonds shall be signed by the  
40 governor and by the president of the board of regents, under  
41 the great seal of the state, attested by the secretary of state,  
42 and the coupons, if any, attached thereto shall bear the  
43 facsimile signature of the president of the board. Such revenue  
44 bonds shall be sold in such manner as the board may deter-  
45 mine to be for the best interests of the state, such sale  
46 to be made at a price not lower than a price which will  
47 show a net return of not more than thirteen per centum per  
48 annum to the purchaser upon the amount paid therefor  
49 computed to the stated maturity dates of such revenue bonds  
50 without regard to any right of prior redemption.

51 The board may enter into trust agreements with banks or  
52 trust companies, within or without the state, and in such  
53 trust agreements or the resolutions authorizing the issuance  
54 of such bonds, may enter into valid and legally binding  
55 covenants with the holders of such revenue bonds as to the  
56 custody, safeguarding and disposition of the proceeds of  
57 such revenue bonds, the moneys in such special fund, sinking  
58 funds, reserve funds, or any other moneys or funds; as to  
59 the rank and priority, if any, of different issues of revenue  
60 bonds under the provisions of this section; and as to any  
61 other matters or provisions which are deemed necessary  
62 and advisable by the board in the best interests of the  
63 state and to enhance the marketability of such revenue  
64 bonds.

65 Such revenue bonds shall be and constitute negotiable in-  
66 struments under the law merchant and the negotiable in-  
67 struments law of the state; shall, together with the in-  
68 terest thereon, be exempt from all taxation by the state of  
69 West Virginia, or by any county, school district, municipality  
70 or political subdivision thereof; and such revenue bonds  
71 shall not be deemed to be obligations or debts of the state,  
72 and the credit or taxing power of the state shall not be  
73 pledged therefor, but such revenue bonds shall be payable  
74 only from the revenue pledged therefor as provided in this  
75 section.

#### **ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.**

##### **§18-26-26. Acquisition, operation and regulation of parking areas and facilities at state institutions of higher education; regulation of parking, speed and flow of traffic on campus roads and driveways; civil and criminal penalties; disposition of revenue.**

1 The West Virginia board of regents is hereby authorized  
2 to construct, maintain and operate automobile parking faci-  
3 ties or areas upon any premises owned or leased at any  
4 college or university under its jurisdiction for use by students,  
5 faculty, staff and visitors. The board may charge fees for  
6 use of the parking facilities or areas under its control. All  
7 moneys collected for the use of the parking facilities or

8 areas shall be paid to the credit of the college or university  
9 at which the fees were charged into a special fund which  
10 is hereby created in the state treasury. The moneys in  
11 the fund shall be used first to pay the cost of maintaining  
12 and operating the parking facilities or areas, but any ex-  
13 cess not needed for this purpose may be used for the  
14 acquisition of property by lease or purchase and the con-  
15 struction thereon of additional parking facilities or areas.  
16 Any money in the fund not needed immediately for the  
17 acquisition, construction, maintenance or operation of the  
18 parking facilities or areas may be temporarily invested by  
19 the board of regents with the state board of investments to  
20 the credit of the college or university at which the fees were  
21 charged.

22 Notwithstanding any other motor vehicle or traffic law  
23 or regulation to the contrary, the board of regents is hereby  
24 authorized to regulate and control at any college or uni-  
25 versity under its jurisdiction the speed, flow and parking of  
26 vehicles on campus roads, driveways and parking facilities  
27 or areas. Rules and regulations for this purpose shall be  
28 promulgated by the board in the manner prescribed in chap-  
29 ter twenty-nine-a of this code and when so promulgated  
30 shall have the force and effect of law. In each parking  
31 facility or area a summary of the rules and regulations  
32 governing the use of the facility or area, including, but not  
33 limited to, the availability of temporary parking permits  
34 and where same may be obtained, and of the penalties  
35 which may be imposed for violations of the rules and regula-  
36 tions shall be conspicuously posted. Along each campus road  
37 and driveway, notice signs pertaining to the speed of vehicles,  
38 spaces available for parking, directional flow of traffic and  
39 penalties which may be imposed for violations of the rules  
40 and regulations shall be conspicuously posted.

41 Any person parking any vehicle or operating any vehicle  
42 in violation of the rules and regulations shall be issued a  
43 citation describing the offense charged and ordering an ap-  
44 pearance within ten days, excluding Saturdays, Sundays and  
45 holidays observed by the college or university, before a  
46 designated official of the college or university and, if the

47 person cited fails to appear within said ten days, ordering  
48 an appearance before a magistrate located in the county in  
49 which the college or university is located or before the  
50 judge of the municipal court, if the college or university  
51 is located within a municipality having such an official.

52 The designated official of the college or university shall  
53 have exclusive jurisdiction of the offense during the ten-  
54 day period. Any person so cited may plead no contest to  
55 the offense and, by so pleading, shall be subject to a civil  
56 penalty to be determined uniformly by the designated of-  
57 ficial and commensurate with the severity of the offense in  
58 an amount not more than ten dollars for each offense as partial  
59 reimbursement to the college or university for the cost of  
60 regulating traffic and parking. Moneys derived from civil  
61 penalties imposed herein shall be deposited in the special  
62 fund in the state treasury created by this section and credited  
63 to the college or university at which the penalty was paid.

64 Upon the expiration of the ten days, or upon a pleading  
65 of not guilty before the designated official of the college  
66 or university within the ten days, the magistrate or judge  
67 of the municipal court shall have jurisdiction of the of-  
68 fense and any person cited under the provisions of this  
69 section, upon a finding of guilty by the magistrate or municip-  
70 al judge, shall be subject to a fine of not less than ten  
71 dollars nor more than twenty dollars for each offense, the  
72 amount to be commensurate with the severity of the offense.

73 Each designated official of the college or university pre-  
74 siding over a case under the provisions of this section shall  
75 keep or cause to be kept a record of every citation which  
76 alleges a violation of such provisions, or the rules and  
77 regulations promulgated in accordance therewith, and shall  
78 keep a record of every official action in reference thereto  
79 including, but not limited to, a record of every plea of  
80 no contest, conviction or acquittal of the offense charged  
81 and the amount of the fine or of the civil penalty resulting  
82 from each citation.

83 Whenever a vehicle is parked on any college or univer-  
84 sity campus road, driveway or parking facility or area in

85 a manner which violates posted regulations and substantially  
86 impedes the flow of traffic or endangers the health and  
87 safety, the institution may, in addition to the issuing of a  
88 citation and subsequent procedures set forth herein, re-  
89 move the vehicle, by towing or otherwise, to an area owned by  
90 the college or university or areas designated for this purpose.  
91 The vehicle, having been towed to the designated area or areas,  
92 may be rendered immovable by use of locking wheel blocks or  
93 other device not damaging to the vehicle. The college or uni-  
94 versity shall maintain any vehicle so towed in the same con-  
95 dition as it was immediately prior to being towed, but not be  
96 liable for any damage to a vehicle towed to, or kept in,  
97 a designated area pursuant to the provisions of this section.  
98 The college or university shall pay for the cost of removing  
99 the vehicle and shall have a right to reimbursement from  
100 the owner for this cost and for the reasonable cost of keeping  
101 the vehicle in the designated area. Until payment of these  
102 costs, the college or university may retain possession of the  
103 vehicle, and the college or university shall have a lien on the  
104 vehicle for the amount due. The college or university may en-  
105 force this lien in the manner provided in section fourteen,  
106 article eleven, chapter thirty-eight of this code for the en-  
107 forcement of other liens.

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## CHAPTER 62

(H. B. 2079—By Delegate Sattes and Delegate Sergeant)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen-b, relating to district transfer of pupils; mandating the transfer of pupils in certain limited circumstances; providing for the payment of state and county funds in the event of such transfer; and providing a date for the termination of the provisions of the bill.

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

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

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-16b. Mandatory transfer of pupils from one district to another district upon parental request.**

1 Notwithstanding the provisions of section sixteen-a of this  
2 article, upon the written request of the custodial parent or  
3 parents or the guardian or person legally responsible for a  
4 pupil within a school district who resides (1) within one  
5 mile of any adjoining district in which the net enrollment  
6 exceeds twenty-five thousand pupils, (2) more than ten miles,  
7 via travel routes upon state roads or highways used by  
8 boards of education for the transportation of pupils, from  
9 the nearest school facility which said pupil has the right  
10 to attend in the home district of such pupil, and (3) closer  
11 in proximity, via travel routes upon state roads or highways  
12 used by boards of education for the transportation of pupils,  
13 to a school facility in which said pupil is qualified academical-  
14 ly to attend in the said adjoining district than the school  
15 facility in the home district, the board of education of that  
16 school district shall transfer such pupil to the adjoining  
17 school district and the transferee school district shall accept  
18 and enroll the transferring pupil and include such pupil in its  
19 net enrollment in accordance with article nine-a of this  
20 chapter.

21 Whenever a pupil is so transferred from one school district  
22 to another district, the board of education of the school  
23 district in which the pupil is a bona fide resident shall pay  
24 to the board of education of the school district to which the  
25 pupil is transferred a tuition that is agreed upon by both  
26 such boards. Tuition for each pupil, when the transferor  
27 board of education and the transferee board of education  
28 cannot agree upon a tuition fee, shall be equal to the differ-  
29 ence between the state aid per pupil received by the county



30 to which the pupil is transferred and the county cost per  
31 pupil in the county to which said pupil is transferred.

32 The provisions of this section shall expire on the first day  
33 of January, one thousand nine hundred ninety-five.

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## CHAPTER 63

(Com. Sub. for S. B. 574—By Senator Holliday)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compulsory preenrollment hearing, vision and speech and language screening tests; requiring such tests for all children entering public school for the first time in this state; authorizing county boards of education to provide, upon request, such screening tests to all children entering non-public schools; requiring trained personnel to conduct such screening tests for all such children; and including speech and language disabilities in the provisions requiring notification.

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

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

### **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

#### **§18-5-17. Compulsory preenrollment hearing, vision and speech and language testing.**

1 All children entering public school for the first time in  
2 this state shall be given prior to their enrollments screen-  
3 ing tests to determine if they might have vision or hear-  
4 ing impairments or speech and language disabilities.  
5 County boards of education may provide, upon request,  
6 such screening tests to all children entering nonpublic

7 school. County boards of education shall conduct these  
8 screening tests for all children through the use of trained  
9 personnel. Parents or guardians of children who are  
10 found to have vision or hearing impairments or speech  
11 and language disabilities shall be notified of the results of  
12 these tests and advised that further diagnosis and treat-  
13 ment of the impairments or disabilities by qualified pro-  
14 fessional personnel is recommended.

15 The state board of education is hereby authorized to  
16 promulgate rules and regulations consistent with this  
17 section. The state superintendent is directed to apply  
18 for federal funds, if available, for the implementation of  
19 the requirements of this section.

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## CHAPTER 64

(Com. Sub. for S. B. 131—By Mr. McGraw, Mr. President, et al.)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

**AN ACT** to repeal section ten-a, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and twenty-two of said article nine-a; to amend and reenact sections two, three, five, eight and eight-a, article four, chapter eighteen-a of said code; and to further amend article four of said chapter eighteen-a by adding thereto three new sections, designated sections five-a, five-b and five-c, all relating to increasing the minimum salary schedule for teachers and school service personnel; increasing the salary increment for principals; providing a salary increment for assistant principals; providing a state salary supplement for teachers and school service personnel, subject to available state appropriations and certain other conditions, to assist in salary equity among the counties; requiring certain surplus revenues to be expended therefor; authorizing counties to continue salary supplements with certain limitations and exceptions thereto; authorizing counties to

provide benefits to school personnel with certain limitations to assist in benefit equity among the counties; providing for aides in special education programs; creating an "Aide IV" class title for school service personnel with a corresponding pay grade; excluding salary equity appropriations in the calculation of "basic resources per pupil"; providing for high quality educational standards; adding a recognition status of substantial approval; deleting the penalty clause for counties on nonapproval status for two years in succession; and repealing an obsolete code provision.

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

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

## **Chapter**

### **18. Education.**

#### **18A. School Personnel**

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

§ 18-9A-2. Definitions.

§ 18-9A-22. Standards for educational quality.

#### **§18-9A-2. Definitions.**

1 For the purpose of this article:

2 "State board" means the West Virginia board of  
3 education.

4 "County board" or "board" means a county board of  
5 education.

6 "Professional salaries" means the state legally mandated  
7 salaries of the professional educators as provided in article  
8 four, chapter eighteen-a of this code.

9     “Professional educator” shall be synonymous with and  
10 shall have the same meaning as “teacher” as defined in  
11 section one, article one, chapter eighteen of this code.

12     “Professional instructional personnel” means a  
13 professional educator whose regular duty is as that of a  
14 classroom teacher, librarian or counselor. A professional  
15 educator having both instructional and administrative or  
16 other duties shall be included as professional instructional  
17 personnel for that ratio of the school day for which he is  
18 assigned and serves on a regular full-time basis in  
19 appropriate instruction, library or counseling duties.

20     “Service personnel salaries” shall mean the state legally  
21 mandated salaries for service personnel as provided in  
22 section eight-a, article four, chapter eighteen-a of the code.

23     “Service personnel” shall mean all personnel as provided  
24 for in section eight, article four, chapter eighteen-a of this  
25 code. For the purpose of computations under this article of  
26 ratios of service personnel to adjusted enrollment, a service  
27 employee shall be counted as that number found by  
28 dividing his number of employment days in a fiscal year by  
29 two hundred: *Provided*, That the computation for any such  
30 person employed for three and one-half hours or less per  
31 day as provided in section eight-a, article four, chapter  
32 eighteen-a of this code, shall be calculated as one half an  
33 employment day.

34     “Net enrollment” means the number of pupils enrolled in  
35 special education programs, kindergarten programs and  
36 grades one to twelve, inclusive, of the public schools of the  
37 county.

38     “Adjusted enrollment” means the net enrollment plus  
39 twice the number of pupils enrolled for special education,  
40 all adjusted to the equivalent of the instructional term and  
41 in accordance with such eligibility requirements and  
42 regulations as established by the state board, but no pupil  
43 shall be counted more than once by reason of transfer  
44 within the county or from another county within the state,  
45 and no pupil shall be counted who attends school in this  
46 state from another state.

47 “Levies for general current expense purposes” means on  
48 each hundred dollars of valuation, twenty-two and five-  
49 tenths cents on Class I property, forty-five cents on Class II  
50 property and ninety cents on Classes III and IV property.

51 “Basic resources per pupil” for the state and the several  
52 counties means the total of (a) property tax revenues  
53 computed at the maximum regular levy rates as provided by  
54 section six-c, article eight, chapter eleven of this code, at a  
55 uniform rate of ninety-five percent, but excluding revenues  
56 from increased levies as provided in section ten, article X of  
57 the Constitution of West Virginia, and (b) basic state aid as  
58 provided in sections twelve and thirteen of this article, but  
59 excluding the foundation allowance to improve  
60 instructional programs as provided in section ten of this  
61 article, and excluding any funds appropriated for the  
62 purpose of achieving salary equity among county board  
63 employees, this total divided by the number of students in  
64 adjusted enrollment: *Provided*, That any year’s allocations  
65 to the counties of the eighty percent portion of the  
66 foundation allowance to improve instructional programs, as  
67 provided in section ten of this article, shall be determined on  
68 the basis of the immediately preceding school year’s basic  
69 resources per pupil.

#### **§18-9A-22. Standards for educational quality.**

1 The purpose of this section is to declare the intent of the  
2 Legislature to provide a thorough and efficient system of  
3 education for West Virginia public school students. High  
4 quality educational standards shall be provided all public  
5 school students on an equal educational opportunity basis.  
6 A system for the review of county educational plans and the  
7 on-site reviews of county educational programs shall  
8 provide assurances that the high quality standards,  
9 established pursuant to this section, are being met.

10 On or before January one, one thousand nine hundred  
11 eighty-five, the state board of education shall establish and  
12 adopt high quality educational standards and shall provide  
13 each county board of education a copy thereof.

14 On or before July one, one thousand nine hundred eighty-  
15 five, and each July one thereafter, each county board of

16 education shall file an annual specific program plan with  
17 the state department of education. The program plan shall,  
18 at a minimum, meet the statewide high quality educational  
19 standards as established by the state board of education.

20 The purpose of the program plan is to allow county  
21 boards of education flexibility in developing school  
22 improvement programs structured around locally  
23 identified needs, but in compliance with the high quality  
24 standards adopted by the state board of education. High  
25 quality standards must be met in curriculum, finance,  
26 transportation, special education, facilities, textbooks,  
27 personnel qualifications and other such areas as  
28 determined by the state board of education.

29 The state department of education shall review the plans  
30 annually and conduct an on-site review of each county's  
31 educational program every fourth year. The state board of  
32 education shall have authority to issue four types of  
33 recognition status: (1) Full approval, (2) substantial  
34 approval, (3) probationary, and (4) nonapproval.

35 Full approval status may be granted to a county board of  
36 education whose educational program has undergone an  
37 on-site evaluation by representatives of the state  
38 department of education and has met the high quality  
39 standards adopted by the state board of education. Full  
40 approval status shall be for a period not to exceed four  
41 years.

42 Substantial approval status may be granted to a county  
43 board of education whose educational program has  
44 satisfied all conditions identified under full approval  
45 status, with the exception of an on-site review, or all  
46 conditions identified under full approval have been satisfied  
47 except that one or more of the high quality standards have  
48 not been met but will be attained within one year, as  
49 described in an acceptable plan of action.

50 Probationary status is given to a county board of  
51 education whose educational program has not met the high  
52 quality standards. Probationary status is a warning that the  
53 county board of education must make specified  
54 improvements. If progress is not made toward meeting the

55 high quality standards during the succeeding year, the  
56 county board of education is automatically placed on  
57 nonapproval status.

58 Nonapproval status is given to a county board of  
59 education which fails to submit an annual program plan,  
60 fails to give evidence of meeting the high quality standards  
61 or has not demonstrated a reasonable effort to meet such  
62 standards.

## CHAPTER 18A. SCHOOL PERSONNEL.

### ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

- §18A-4-2. Salaries, wages, and other benefits.
- §18A-4-3. State minimum annual salary increments for principals and assistant principals.
- §18A-4-5. Salary equity among the counties; state salary supplement.
- §18A-4-5a. County salary supplements for teachers.
- §18A-4-5b. County salary supplements for school service personnel.
- §18A-4-5c. Equity appropriation from surplus revenues.
- §18A-4-8. Employment term and class titles of service personnel; definitions.
- §18A-4-8a. Service personnel minimum monthly salaries.

§18A-4-2. State minimum salaries for teachers.

STATE MINIMUM SALARY SCHEDULE

(1) Years Exp.	(2) 4th Class	(3) 3rd Class	(4) 2nd Class	(5) A.B. A.B.	(6) A.B. + 15	(7) M.A.	(8) M.A. + 15	(9) M.A. + 30	(10) Doc- torate
1 0	10,453	11,060	11,303	12,455	13,055	13,655	14,255	14,855	15,455
2 1	10,639	11,246	11,489	12,816	13,416	14,016	14,616	15,216	15,816
3 2	10,825	11,432	11,675	13,177	13,777	14,377	14,977	15,577	16,177
4 3	11,011	11,618	11,861	13,538	14,138	14,738	15,338	15,938	16,538
5 4	11,197	11,804	12,047	13,899	14,499	15,099	15,699	16,299	16,899
6 5	11,383	11,990	12,233	14,260	14,860	15,460	16,060	16,660	17,260
7 6	11,569	12,176	12,419	14,621	15,221	15,821	16,421	17,021	17,621
8 7	0	12,362	12,605	14,982	15,582	16,182	16,782	17,382	17,982
9 8	0	12,548	12,791	15,343	15,943	16,543	17,143	17,743	18,343
10 9	0	0	12,977	15,704	16,304	16,904	17,504	18,104	18,704
11 10	0	0	13,163	16,065	16,665	17,265	17,865	18,465	19,065
12 11	0	0	0	16,426	17,026	17,626	18,226	18,826	19,426
13 12	0	0	0	16,787	17,387	17,987	18,587	19,187	19,787
14 13	0	0	0	17,148	17,748	18,348	18,948	19,548	20,148
15 14	0	0	0	0	0	18,709	19,309	19,909	20,509
16 15	0	0	0	0	0	19,070	19,670	20,270	20,870
17 16	0	0	0	0	0	19,431	20,031	20,631	21,231
18 17	0	0	0	0	0	0	0	20,992	21,592
19 18	0	0	0	0	0	0	0	21,353	21,953
20 19	0	0	0	0	0	0	0	21,714	22,314



21 On and after the first day of July, one thousand nine  
 22 hundred eighty-four, each teacher shall receive the amount  
 23 prescribed in the "state minimum salary schedule" as set  
 24 forth in this section, specific additional amounts prescribed  
 25 in this article, and any county supplement in effect in a  
 26 county pursuant to section five-a of this article during the  
 27 contract year.

**§18A-4-3. State minimum annual salary increments for principals and assistant principals.**

1 In addition to any salary increments for principals and  
 2 assistant principals in effect on the first day of January, one  
 3 thousand nine hundred eighty-four, and paid from local  
 4 funds, and in addition to the county schedule in effect for  
 5 teachers, the county board shall pay each principal a  
 6 principal's salary increment and each assistant principal an  
 7 assistant principal's salary increment as prescribed by this  
 8 section commencing on the first day of July, one thousand  
 9 nine hundred eighty-four, from state funds appropriated  
 10 therefor.

11 State funds for this purpose shall be paid within the West  
 12 Virginia public school support plan in accordance with  
 13 article nine-a, chapter eighteen of this code.

14 The salary increment herein for each principal shall be  
 15 determined by multiplying the basic salary for teachers in  
 16 accordance with the classification of certification and of  
 17 training of said principal as prescribed in this article, by the  
 18 appropriate percentage rate prescribed herein according to  
 19 the number of teachers supervised. The salary increment  
 20 herein for each assistant principal shall be determined in  
 21 the same manner as that for principals, utilizing the number  
 22 of teachers supervised by the principal under whose  
 23 direction the assistant principal works, except that the  
 24 percentage rate shall be fifty percent of the rate prescribed  
 25 for said principal.

26 **STATE MINIMUM SALARY INCREMENT RATES**  
 27 **FOR PRINCIPALS AND ASSISTANT PRINCIPALS**

28	No. of Teachers	
29	<b>Supervised</b>	<b>Rates</b>
30	1-5	2%

31	6-20	3%
32	21-35	4%
33	36 and up	5%

34 Salaries for employment beyond the minimum  
 35 employment term shall be at the same daily rate as the  
 36 salaries for the minimum employment term.

37 For the purpose of determining the number of teachers  
 38 supervised by a principal, the county board shall use data  
 39 for the second school month of the prior school term and the  
 40 number of teachers shall be interpreted to mean the total  
 41 number of professional educators assigned to each school  
 42 on a full-time equivalency basis: *Provided*, That due to a  
 43 change in circumstances because of consolidation or  
 44 catastrophe, the county board of education shall determine  
 45 what is a reasonable number of supervised teachers in order  
 46 to establish the appropriate increment percentage rate.

47 No county shall reduce local funds allocated for salary  
 48 increments for principals and assistant principals in effect  
 49 on the first day of January, one thousand nine hundred  
 50 eighty-four, and used in supplementing the state minimum  
 51 salaries as provided for in this article, unless forced to do so  
 52 by defeat of a special levy, or a loss in assessed values or  
 53 events over which it has no control and for which the county  
 54 board has received approval from the state board prior to  
 55 making such reduction.

56 Nothing herein shall prevent a county board from  
 57 providing, in a uniform manner, salary increments greater  
 58 than those required by this section.

**§18A-4-5. Salary equity among the counties; state salary supplement.**

1 To assist the state in meeting its objective of salary equity  
 2 among the counties, on and after the first day of July, one  
 3 thousand nine hundred eighty-four, subject to available  
 4 state appropriations and the conditions set forth herein,  
 5 each teacher and school service personnel shall receive a  
 6 supplemental amount in addition to the amount from the  
 7 state minimum salary schedules provided for in this article.

8 State funds for this purpose shall be paid within the West  
9 Virginia public school support plan in accordance with  
10 article nine-a, chapter eighteen of this code. The amount  
11 allocated for salary equity shall be apportioned between  
12 teachers and school service personnel in direct proportion  
13 to that amount necessary to support the professional  
14 salaries and service personnel salaries statewide under  
15 sections four and five, article nine-a, chapter eighteen of  
16 this code: *Provided*, That in making such division an  
17 adequate amount of state equity funds shall be reserved to  
18 finance the appropriate foundation allowances and staffing  
19 incentives provided for in said article nine-a.

20 Pursuant to this section, each teacher and school service  
21 personnel shall receive the amount that is the difference  
22 between their authorized state minimum salary and ninety-  
23 five percent of the maximum salary schedules prescribed in  
24 sections five-a and five-b of this article, reduced by any  
25 amount provided by the county as a salary supplement for  
26 teachers and school service personnel on the first day of  
27 January of the fiscal year immediately preceding that in  
28 which the salary equity appropriation is distributed:  
29 *Provided*, That such amount may be reduced  
30 proportionately based upon the amount of funds  
31 appropriated for this purpose.

32 No county may reduce any salary supplement that was in  
33 effect on the first day of January, one thousand nine  
34 hundred eighty-four, except as permitted by sections five-a  
35 and five-b of this article.

**§18A-4-5a. County salary supplements for teachers.**

1 County boards of education in fixing the salaries of  
2 teachers shall use at least the state minimum salaries  
3 established under the provisions of this article. The board  
4 may establish salary schedules which shall be in excess of  
5 the state minimums fixed by this article, such county  
6 schedules to be uniform throughout the county as to the  
7 above stipulated training classifications, experience,  
8 responsibility and other requirements, except that no such  
9 county schedule may exceed one hundred two and one-half  
10 percent of a schedule which incorporates the state  
11 minimum salary for teachers in effect on the first day of

12 July, one thousand nine hundred eighty-four, and adopts a  
13 supplement which equals the highest supplement provided  
14 by a county on the first day of January, one thousand nine  
15 hundred eighty-four, so as to assist the state in meeting its  
16 objective of salary equity among the counties: *Provided,*  
17 That all teachers in the state shall be entitled to any  
18 increases in the minimum salary schedules established  
19 under the provisions of this article, and when a county  
20 schedule changes due to said increase in the state minimum  
21 salary taking effect after the first day of July, one thousand  
22 nine hundred eighty-four, it shall not be deemed to exceed  
23 the maximum salary schedule prescribed herein.

24 Counties may fix higher salaries for teachers placed in  
25 special instructional assignments, for those assigned to or  
26 employed for duties other than regular instructional duties  
27 and for teachers of one-teacher schools, and they may  
28 provide additional compensation for any teacher assigned  
29 duties in addition to his regular instructional duties  
30 wherein such noninstructional duties are not a part of the  
31 scheduled hours of the regular school day. Uniformity also  
32 shall apply to such additional salary increments or  
33 compensation for all persons performing like assignments  
34 and duties within the county: *Provided,* That in  
35 establishing such local salary schedules, no county shall  
36 reduce local funds allocated for salaries in effect on the first  
37 day of January, one thousand nine hundred and eighty-  
38 four, and used in supplementing the state minimum salaries  
39 as provided for in this article, unless forced to do so by  
40 defeat of a special levy, or a loss in assessed values or events  
41 over which it has no control and for which the county board  
42 has received approval from the state board prior to making  
43 such reduction.

44 Counties may provide, in a uniform manner, benefits for  
45 teachers which require an appropriation from local funds  
46 including, but not limited to, dental, optical, health and  
47 income protection insurance, vacation time and retirement  
48 plans excluding the state teachers retirement system:  
49 *Provided,* That no county may expend per teacher an  
50 amount which exceeds one hundred twelve percent of the  
51 amount expended by the county having the highest  
52 expenditure per teacher on January one, one thousand nine

53 hundred eighty-four, unless such excessive amount is  
54 approved by the state board of education to allow for an  
55 inflation factor to maintain or obtain a comparable benefit  
56 or a higher per unit rate among smaller groups. The state  
57 board shall determine what benefits are authorized by this  
58 section and whether any county's expenditure per teacher  
59 exceeds the maximum prescribed by this section, so as to  
60 assist the state in meeting its objective of benefit equity  
61 among the counties. Nothing herein shall prohibit the  
62 maintenance nor result in the reduction of any benefits in  
63 effect on January one, one thousand nine hundred eighty-  
64 four, by any county board of education.

65 To further assist the state in meeting such objective, each  
66 county board of education shall provide to the state board  
67 of education on or before the first day of November, one  
68 thousand nine hundred eighty-four, such information as  
69 the state board directs to assist the state superintendent of  
70 schools in preparing a report to be submitted to the  
71 Legislature on the first day of the regular session thereof in  
72 the year one thousand nine hundred eighty-five. Such  
73 report shall include findings, conclusions and recom-  
74 mendations with respect to benefits provided and meeting  
75 the objective of benefit equity among the counties.

**§18A-4-5b. County salary supplements for school service personnel.**

1 The county board of education may establish salary  
2 schedules which shall be in excess of the state minimums  
3 fixed by this article, except that no such schedule may  
4 exceed one hundred two and one-half percent of a schedule  
5 which incorporates the state minimum salary for school  
6 service personnel in effect on the first day of July, one  
7 thousand nine hundred eighty-four, and adopts a monthly  
8 supplement of two hundred and five dollars for zero years of  
9 experience for all pay grades and which increases said  
10 monthly supplement by two dollars for each year of  
11 experience codified for school service personnel in this  
12 article, so as to assist the state in meeting its objective of  
13 salary equity among the counties: *Provided*, That all service  
14 personnel in the state shall be entitled to any increase in the  
15 minimum salary for school service personnel established

16 under the provisions of this article, and when a county  
17 schedule changes due to said increase in the state minimum  
18 salary taking effect after the first day of July, one thousand  
19 nine hundred eighty-four, it shall not be deemed to exceed  
20 the maximum salary schedule prescribed herein. Any  
21 county supplement for any position which, on the first day  
22 of January, one thousand nine hundred eighty-four,  
23 extends the schedule beyond the maximum prescribed  
24 herein for such position shall be exempt from the  
25 maximums stated herein, subject to the approval of the  
26 state board, but no such supplement shall be increased  
27 beyond the amount received on the first day of January, one  
28 thousand nine hundred eighty-four.

29 These county schedules shall be uniform throughout the  
30 county with regard to any training classification,  
31 experience, years of employment, responsibility, duties,  
32 pupil participation, pupil enrollment, size of buildings,  
33 operation of equipment or other requirements. Further,  
34 uniformity shall apply to all salaries, rates of pay, benefits,  
35 increments or compensation for all persons regularly  
36 employed and performing like assignments and duties  
37 within the county: *Provided*, That in establishing such local  
38 salary schedules, no county shall reduce local funds  
39 allocated for salaries in effect on the first day of January,  
40 one thousand nine hundred eighty-four, and used in  
41 supplementing the state minimum salaries as provided for  
42 in this article, unless forced to do so by defeat of a special  
43 levy, or a loss in assessed values or events over which it has  
44 no control and for which the county board has received  
45 approval from the state board prior to making such  
46 reduction.

47 Counties may provide, in a uniform manner, benefits for  
48 service personnel which require an appropriation from  
49 local funds including, but not limited to, dental, optical,  
50 health and income protection insurance, vacation time and  
51 retirement plans excluding the state teachers retirement  
52 system: *Provided*, That no county may expend per school  
53 service personnel an amount which exceeds one hundred  
54 twelve percent of the amount expended by the county  
55 having the highest expenditure per service personnel on  
56 January one, one thousand nine hundred eighty-four,

57 unless such excessive amount is approved by the state board  
58 of education to allow for an inflation factor to maintain or  
59 obtain a comparable benefit or a higher per unit rate among  
60 smaller groups. The state board shall determine what  
61 benefits are authorized by this section and whether any  
62 county's expenditure per service personnel exceeds the  
63 maximum prescribed by this section, so as to assist the state  
64 in meeting its objective of benefit equity among the  
65 counties. Nothing herein shall prohibit the maintenance,  
66 nor result in the reduction of any benefits in effect on  
67 January one, one thousand nine hundred eighty-four, by  
68 any county board of education.

69 To further assist the state in meeting such objective, each  
70 county board of education shall provide to the state board  
71 of education on or before the first day of November, one  
72 thousand nine hundred eighty-four, such information as  
73 the state board directs to assist the state superintendent of  
74 schools in preparing a report to be submitted to the  
75 Legislature on the first day of the regular session thereof in  
76 the year one thousand nine hundred eighty-five. Such  
77 report shall include findings, conclusions and  
78 recommendations with respect to benefits provided and  
79 meeting the objective of benefit equity among the counties.

**§18A-4-5c. Equity appropriation from surplus revenues.**

1 The first twenty-nine million dollars of surplus funds  
2 from the state fund, general revenue, that have accrued as of  
3 the thirtieth day of June, one thousand nine hundred  
4 eighty-four, shall be appropriated and shall be expended  
5 during fiscal year one thousand nine hundred eighty-four—  
6 eighty-five, in accordance with section five of this article,  
7 subject to the terms and conditions set forth in this section  
8 and in said section five.

9 In the event that the surplus revenues as of the thirtieth  
10 day of June, one thousand nine hundred eighty-four, are not  
11 sufficient to meet all of the appropriation mandated by this  
12 section, then the appropriation shall be available only to the  
13 extent of the total actual surplus accrued as of said date.

**§18A-4-8. Employment term and class titles of service  
personnel; definitions.**

1 The purpose of this section is to establish an employment  
2 term and class titles for service personnel. The employment  
3 term for service personnel shall be no less than ten months,  
4 a month being defined as twenty employment days:  
5 *Provided*, That the county board of education may contract  
6 with all or part of these personnel for a longer term. The  
7 beginning and closing dates of the ten-month term shall not  
8 exceed forty-three weeks. Service personnel employed on a  
9 yearly or twelve-month basis may be employed by calendar  
10 months. Whenever there is a change in job assignment  
11 during the school year, the minimum pay scale and any  
12 county supplement shall be applicable.

13 Service personnel employed in the same classification for  
14 more than the two hundred day minimum employment term  
15 shall be paid for additional employment at a daily rate of  
16 not less than the daily rate paid for the two hundred day  
17 minimum employment term.

18 No service employee, without his agreement, shall be  
19 required to report for work more than five days per week  
20 and no part of any working day may be accumulated by the  
21 employer for future work assignments, unless the employee  
22 agrees thereto.

23 Should an employee whose regular work week is  
24 scheduled from Monday through Friday agree to perform  
25 any work assignments on a Saturday or Sunday, the  
26 employee shall be paid for at least one-half day of work for  
27 each such day he reports for work, and if the employee  
28 works more than three and one-half hours on any Saturday  
29 or Sunday, he shall be paid for at least a full day of work for  
30 each such day.

31 Custodians required to work a daily work schedule that is  
32 interrupted, that is, who do not work a continuous period in  
33 one day, shall be paid additional compensation which shall  
34 be equal to at least one eighth of their total salary as  
35 provided by their state minimum salary and any county pay  
36 supplement, and payable entirely from county funds.

37 Upon the change in classification or upon meeting the  
38 requirements of an advanced classification of or by any  
39 employee, his salary shall be made to comply with the



40 requirements of this article, and to any county salary  
41 schedule in excess of the minimum requirements of this  
42 article, based upon his advanced classification and  
43 allowable years of employment.

44 An employee's contract as provided in sections four and  
45 five, article two of this chapter shall state the appropriate  
46 monthly salary the employee is to be paid, based on the class  
47 title as provided in this article and any county salary  
48 schedule in excess of the minimum requirements of this  
49 article.

50 The column heads of the state minimum pay scale and  
51 class titles, set forth in section eight-a of this article are  
52 defined as follows:

53 "Pay grade" means the monthly salary applicable to class  
54 titles of service personnel.

55 "Years of employment" means the number of years which  
56 an employee classified as service personnel has been  
57 employed by a board of education in any position prior to or  
58 subsequent to the effective date of this section and  
59 including service in the armed forces of the United States if  
60 the employee were employed at the time of his induction.  
61 For the purpose of section eight-a of this article, years of  
62 employment shall be limited to the number of years shown  
63 and allowed under the state minimum pay scale as set forth  
64 in section eight-a of this article.

65 "Class title" means the name of the position or job held by  
66 service personnel.

67 "Accountant I" means personnel employed to maintain  
68 payroll records and reports and perform one or more  
69 operations relating to a phase of the total payroll.

70 "Accountant II" means personnel employed to maintain  
71 accounting records and to be responsible for the accounting  
72 process associated with billing, budgets, purchasing and  
73 related operations.

74 "Accountant III" means personnel who are employed in  
75 the county board of education office to manage and  
76 supervise accounts payable and/or payroll procedures.

77 "Aide I" means those personnel selected and trained for  
78 teacher-aid classifications such as monitor aide, clerical  
79 aide, classroom aide or general aide.

80 "Aide II" means those personnel referred to in the "Aide  
81 I" classification who have completed a training program  
82 approved by the state board of education, or who hold a  
83 high school diploma or have received a general educational  
84 development certificate. Only personnel classified in an  
85 Aide II class title shall be employed as an aide in any special  
86 education program.

87 "Aide III" means those personnel referred to in the "Aide  
88 I" classification who hold a high school diploma or a  
89 general educational development certificate and have  
90 completed six semester hours of college credit at an  
91 institution of higher education or are employed as an aide in  
92 a special education program and have one year's experience  
93 as an aide in special education.

94 "Aide IV" means personnel referred to in the "Aide I"  
95 classification who hold a high school diploma or a general  
96 educational development certificate and who have  
97 completed eighteen hours of state board-approved college  
98 credit at a regionally accredited institution of higher  
99 education, or who have completed fifteen hours of state  
100 board-approved college credit at a regionally accredited  
101 institution of higher education and successfully completed  
102 an in-service training program determined by the state  
103 board to be the equivalent of three hours of college credit.

104 "Audiovisual technician" means personnel employed to  
105 perform minor maintenance on audiovisual equipment,  
106 films, supplies and the filling of requests for equipment.

107 "Auditor" means personnel employed to examine and  
108 verify accounts of individual schools and to assist schools  
109 and school personnel in maintaining complete and accurate  
110 records of their accounts.

111 "Bus operator" means personnel employed to operate  
112 school buses and other school transportation vehicles as  
113 provided by the state board of education.

114 "Buyer" means personnel employed to review and write  
115 specifications, negotiate purchase bids and recommend  
116 purchase agreements for materials and services that meet  
117 predetermined specifications at the lowest available costs.

118 "Cabinetmaker" means personnel employed to construct  
119 cabinets, tables, bookcases and other furniture.

120 "Cafeteria manager" means personnel employed to direct  
121 the operation of a food services program in a school,  
122 including assigning duties to employees, approving  
123 requisitions for supplies and repairs, keeping inventories,  
124 inspecting areas to maintain high standards of sanitation,  
125 preparing financial reports and keeping records pertinent  
126 to food services of a school.

127 "Carpenter I" means personnel classified as a carpenter's  
128 helper.

129 "Carpenter II" means personnel classified as a  
130 journeyman carpenter.

131 "Chief mechanic" means personnel employed to be  
132 responsible for directing activities which ensure that  
133 student transportation or other board-owned vehicles are  
134 properly and safely maintained.

135 "Clerk I" means personnel employed to perform clerical  
136 tasks.

137 "Clerk II" means personnel employed to perform general  
138 clerical tasks, prepare reports and tabulations and operate  
139 office machines.

140 "Computer operator" means qualified personnel  
141 employed to operate computers.

142 "Cook I" means personnel employed as a cook's helper.

143 "Cook II" means personnel employed to interpret menus,  
144 to prepare and serve meals in a food service program of a  
145 school and shall include personnel who have been employed  
146 as a "Cook I" for a period of four years, if such personnel  
147 have not been elevated to this classification within that  
148 period of time.

149 "Cook III" means personnel employed to prepare and  
150 serve meals, make reports, prepare requisitions for  
151 supplies, order equipment and repairs for a food service  
152 program of a school system.

153 "Crew leader" means personnel employed to organize the  
154 work for a crew of maintenance employees to carry out  
155 assigned projects.

156 "Custodian I" means personnel employed to keep  
157 buildings clean and free of refuse.

158 "Custodian II" means personnel employed as a watchman  
159 or groundsman.

160 "Custodian III" means personnel employed to keep  
161 buildings clean and free of refuse, to operate the heating or  
162 cooling systems and to make minor repairs.

163 "Custodian IV" means personnel employed as head  
164 custodians. In addition to providing services as defined in  
165 "Custodian III," their duties may include supervising other  
166 custodian personnel.

167 "Director or coordinator of services" means personnel  
168 not defined as professional personnel or professional  
169 educators in section one, article one of this chapter, who are  
170 assigned to direct a department or division.

171 "Draftsman" means personnel employed to plan, design  
172 and produce detailed architectural/engineering drawings.

173 "Electrician I" means personnel employed as an  
174 apprentice electrician helper or who holds an electrician  
175 helper license issued by the state fire marshal.

176 "Electrician II" means personnel employed as an  
177 electrician journeyman or who holds a journeyman  
178 electrician license issued by the state fire marshal.

179 "Electronic technician I" means personnel employed at  
180 the apprentice level to repair and maintain electronic  
181 equipment.

182 "Electronic technician II" means personnel employed at  
183 the journeyman level to repair and maintain electronic  
184 equipment.

185 "Executive secretary" means personnel employed as the  
186 county school superintendent's secretary or as a secretary  
187 who is assigned to a position characterized by significant  
188 administrative duties.

189 "Foods service supervisor" means qualified personnel  
190 not defined as professional personnel or professional  
191 educators in section one, article one of this chapter,  
192 employed to manage and supervise a county school system's  
193 food service program. The duties would include preparing  
194 in-service training programs for cooks and food service  
195 employees, instructing personnel in the areas of quantity  
196 cooking with economy and efficiency, and keeping  
197 aggregate records and reports.

198 "Foreman" means skilled persons employed for  
199 supervision of personnel who work in the areas of repair  
200 and maintenance of school property and equipment.

201 "General maintenance" means personnel employed as  
202 helpers to skilled maintenance employees and to perform  
203 minor repairs to equipment and buildings of a county  
204 school system.

205 "Glazier" means personnel employed to replace glass or  
206 other materials in windows and doors and to do minor  
207 carpentry tasks.

208 "Graphic artist" means personnel employed to prepare  
209 graphic illustrations.

210 "Groundsman" means personnel employed to perform  
211 duties that relate to the appearance, repair and general care  
212 of school grounds in a county school system. Additional  
213 assignments may include the operation of a small heating  
214 plant and routine cleaning duties in buildings.

215 "Handyman" means personnel employed to perform  
216 routine manual tasks in any operation of the county school  
217 system.

218 "Heating and air conditioning mechanic I" means  
219 personnel employed at the apprentice level to install, repair  
220 and maintain heating and air conditioning plants and  
221 related electrical equipment.

222 "Heating and air conditioning mechanic II" means  
223 personnel employed at the journeyman level to install,  
224 repair and maintain heating and air conditioning plants  
225 and related electrical equipment.

226 "Heavy equipment operator" means personnel employed  
227 to operate heavy equipment.

228 "Inventory supervisor" means personnel who are  
229 employed to supervise or maintain operations in the receipt,  
230 storage, inventory and issuance of materials and supplies.

231 "Key punch operator" means qualified personnel  
232 employed to operate key punch machines or verifying  
233 machines.

234 "Locksmith" means personnel employed to repair and  
235 maintain locks and safes.

236 "Lubrication man" means personnel employed to  
237 lubricate and service gasoline or diesel-powered equipment  
238 of a county school system.

239 "Machinist" means personnel employed to perform  
240 machinist tasks which include the ability to operate a lathe,  
241 planer, shaper, threading machine and wheel press. Such  
242 personnel should also have ability to work from blueprints  
243 and drawings.

244 "Mail clerk" means personnel employed to receive, sort,  
245 dispatch, deliver or otherwise handle letters, parcels and  
246 other mail.

247 "Maintenance clerk" means personnel employed to  
248 maintain and control a stocking facility to keep adequate  
249 tools and supplies on hand for daily withdrawal for all  
250 school maintenance crafts.

251 "Mason" means personnel employed to perform tasks  
252 connected with brick and block laying and carpentry tasks  
253 related to such laying.

254 "Mechanic" means personnel employed who can  
255 independently perform skilled duties in the maintenance  
256 and repair of automobiles, school buses and other  
257 mechanical and mobile equipment to use in a county school  
258 system.

259 "Mechanic assistant" means personnel employed as a  
260 mechanic apprentice and helper.

261 "Office equipment repairman I" means personnel  
262 employed as an office equipment repairman apprentice or  
263 helper.

264 "Office equipment repairman II" means personnel  
265 responsible for servicing and repairing all office machines  
266 and equipment. Personnel shall be responsible for parts  
267 being purchased necessary for the proper operation of a  
268 program of continuous maintenance and repair.

269 "Painter" means personnel employed to perform duties of  
270 painting, finishing and decorating of wood, metal and  
271 concrete surfaces of buildings, other structures, equipment,  
272 machinery and furnishings of a county school system.

273 "Plumber I" means personnel employed as an apprentice  
274 plumber and helper.

275 "Plumber II" means personnel employed as a journeyman  
276 plumber.

277 "Printing operator" means personnel employed to oper-  
278 ate duplication equipment, and as required, to cut,  
279 collate, staple, bind and shelve materials.

280 "Printing supervisor" means personnel employed to  
281 supervise the operation of a print shop.

282 "Programmer" means personnel employed to design and  
283 prepare programs for computer operation.

284 "Roofing/sheet metal mechanic" means personnel  
285 employed to install, repair, fabricate and maintain roofs,  
286 gutters, flashing and duct work for heating and ventilation.

287 "Sanitation plant operator" means personnel employed  
288 to operate and maintain a water or sewage treatment plant  
289 to ensure the safety of the plant's effluent for human  
290 consumption or environmental protection.

291 "School bus supervisor" means qualified personnel  
292 employed to assist in selecting school bus operators and  
293 routing and scheduling of school buses, operate a bus when  
294 needed, relay instructions to bus operators, plan emergency

295 routing of buses and promoting good relationships with  
296 parents, pupils, bus operators and other employees.

297 "Secretary I" means personnel employed to transcribe  
298 from notes or mechanical equipment, receive callers,  
299 perform clerical tasks, prepare reports and operate office  
300 machines.

301 "Secretary II" means personnel employed in any  
302 elementary, secondary, kindergarten, nursery, special  
303 education, vocational or any other school as a secretary. The  
304 duties may include performing general clerical tasks,  
305 transcribing from notes or stenotype or mechanical  
306 equipment or a sound-producing machine, preparing  
307 reports, receiving callers and referring them to proper  
308 persons, operating office machines, keeping records and  
309 handling routine correspondence. There is nothing implied  
310 herein that would prevent such employees from holding or  
311 being elevated to a higher classification.

312 "Secretary III" means personnel assigned to the county  
313 board of education office administrators in charge of  
314 various instructional, maintenance, transportation, food  
315 services, operations and health departments, federal  
316 programs or departments with particular responsibilities of  
317 purchasing and financial control or any personnel who have  
318 served in a position which meets the definition of "secretary  
319 II" herein for twelve continuous years.

320 "Supervisor of maintenance" means skilled personnel  
321 not defined as professional personnel or professional  
322 educators as in section one, article one of this chapter. The  
323 responsibilities would include directing the upkeep of  
324 buildings and shops, issuing instructions to subordinates  
325 relating to cleaning, repairs and maintenance of all struc-  
326 tures and mechanical and electrical equipment of a board of  
327 education.

328 "Supervisor of transportation" means qualified  
329 personnel employed to direct school transportation  
330 activities, properly and safely, and to supervise the  
331 maintenance and repair of vehicles, buses and other  
332 mechanical and mobile equipment used by the county  
333 school system.



334 "Switchboard operator-receptionist" means personnel  
335 employed to refer incoming calls, to assume contact with  
336 the public, to direct and to give instructions as necessary, to  
337 operate switchboard equipment and to provide clerical  
338 assistance.

339 "Truck driver" means personnel employed to operate  
340 light or heavy duty gasoline and diesel-powered vehicles.

341 "Warehouse clerk" means personnel employed to be  
342 responsible for receiving, storing, packing and shipping  
343 goods.

344 "Watchman" means personnel employed to protect  
345 school property against damage or theft. Additional  
346 assignments may include operation of a small heating plant  
347 and routine cleaning duties.

348 "Welder" means personnel employed to provide  
349 acetylene or electrical welding services for a school system.

350 In addition to the compensation provided for in section  
351 eight-a of this article, for service personnel, each service  
352 employee shall, notwithstanding any provisions in this code  
353 to the contrary, be entitled to all service personnel employee  
354 rights, privileges and benefits provided under this or any  
355 other chapter of this code without regard to such  
356 employee's hours of employment or the methods or sources  
357 of compensation.

358 Service personnel whose years of employment exceed the  
359 number of years shown and provided for under the state  
360 minimum pay scale set forth in section eight-a of this  
361 article, may not be paid less than the amount shown for the  
362 maximum years of employment shown and provided for in  
363 the classification in which he is employed.

364 The county boards shall review each service personnel  
365 employee job classification annually and shall reclassify all  
366 service employees as required by such job classifications.  
367 The state superintendent of schools is hereby authorized to  
368 withhold state funds appropriated pursuant to this article  
369 for salaries for service personnel who are improperly  
370 classified by such county boards. Further, he shall order  
371 county boards to correct immediately any improper  
372 classification matter and with the assistance of the attorney

373 general shall take any legal action necessary against any  
374 county board to enforce such order.

375 The state board of education is authorized to establish  
376 other class titles of service personnel positions and jobs not  
377 listed in this section. The state board of education is further  
378 authorized to provide appropriate pay grades for such  
379 positions and jobs but pay shall be established within the  
380 minimum salary scale in section eight-a of this article.

381 No service employee, without his written consent, may be  
382 reclassified by class title, nor may a service employee,  
383 without his written consent, be relegated to any condition  
384 of employment which would result in a reduction of his  
385 salary, rate of pay, compensation or benefits earned during  
386 the current fiscal year or which would result in a reduction  
387 of his salary, rate of pay, compensation or benefits for  
388 which he would qualify by continuing in the same job  
389 position and classification held during said fiscal year and  
390 subsequent years.

391 Any board failing to comply with the provisions of this  
392 article may be compelled to do so by mandamus, and shall  
393 be liable to any party prevailing against the board for court  
394 costs and his reasonable attorney fee, as determined and  
395 established by the court.

**§18A-4-8a. Service personnel minimum monthly salaries.**

**STATE MINIMUM PAY SCALE PAY GRADE**

Years of Employ- ment		A	B	C	D	E	F	G	H
1	0	718	738	778	828	878	938	968	1,038
2	1	738	758	798	848	898	958	988	1,058
3	2	758	778	818	868	918	978	1,008	1,078
4	3	778	798	838	888	938	998	1,028	1,098
5	4	798	818	858	908	958	1,018	1,048	1,118
6	5	818	838	878	928	978	1,038	1,068	1,138
7	6	838	858	898	948	998	1,058	1,088	1,158
8	7	858	878	918	968	1,018	1,078	1,108	1,178
9	8	878	898	938	988	1,038	1,098	1,128	1,198
10	9	898	918	958	1,008	1,058	1,118	1,148	1,218
11	10	918	938	978	1,028	1,078	1,138	1,168	1,238

12	11	938	958	998	1,048	1,098	1,158	1,188	1,258
13	12	958	978	1,018	1,068	1,118	1,178	1,208	1,278
14	13	978	998	1,038	1,088	1,138	1,198	1,228	1,298
15	14	998	1,018	1,058	1,108	1,158	1,218	1,248	1,318
16	15	1,018	1,038	1,078	1,128	1,178	1,238	1,268	1,338
17	16	1,038	1,058	1,098	1,148	1,198	1,258	1,288	1,358
18	17	1,058	1,078	1,118	1,168	1,218	1,278	1,308	1,378
19	18	1,078	1,098	1,138	1,188	1,238	1,298	1,328	1,398
20	19	1,098	1,118	1,158	1,208	1,258	1,318	1,348	1,418
21	20	1,118	1,138	1,178	1,228	1,278	1,338	1,368	1,438

	<b>CLASS TITLE</b>	<b>PAY GRADE</b>
22	Accountant I .....	D
23	Accountant II .....	E
24	Accountant III .....	F
25	Aide I .....	A
26	Aide II .....	B
27	Aide III .....	C
28	Aide IV .....	D
29	Audiovisual Technician .....	C
30	Auditor .....	G
31	Bus Operator .....	D
32	Buyer .....	F
33	Cabinetmaker .....	G
34	Cafeteria Manager .....	D
35	Carpenter I .....	E
36	Carpenter II .....	F
37	Chief Mechanic .....	G
38	Clerk I .....	B
39	Clerk II .....	C
40	Computer Operator .....	E
41	Cook I .....	A
42	Cook II .....	B
43	Cook III .....	C
44	Crew Leader .....	F
45	Custodian I .....	A
46	Custodian II .....	B
47	Custodian III .....	C
48	Custodian IV .....	D
49	Director or Coordinator of Services .....	H
50	Draftsman .....	D
51	Electrician I .....	F

52	Electrician II	G
53	Electronic Technician I	F
54	Electronic Technician II	G
55	Executive Secretary	G
56	Food Services Supervisor	G
57	Foreman	G
58	General Maintenance	C
59	Glazier	D
60	Graphic Artist	D
61	Groundsman	B
62	Handyman	B
63	Heating and Air Conditioning Mechanic I	E
64	Heating and Air Conditioning Mechanic II	G
65	Heavy Equipment Operator	E
66	Inventory Supervisor	D
67	Key Punch Operator	B
68	Locksmith	G
69	Lubrication Man	C
70	Machinist	F
71	Mail Clerk	D
72	Maintenance Clerk	C
73	Mason	G
74	Mechanic	F
75	Mechanic Assistant	E
76	Office Equipment Repairman I	F
77	Office Equipment Repairman II	G
78	Painter	E
79	Plumber I	E
80	Plumber II	G
81	Printing Operator	B
82	Printing Supervisor	D
83	Programmer	H
84	Roofing/Sheet Metal Mechanic	F
85	Sanitation Plant Operator	F
86	School Bus Supervisor	E
87	Secretary I	D
88	Secretary II	E
89	Secretary III	F
90	Supervisor of Maintenance	H
91	Supervisor of Transportation	H
92	Switchboard Operator-Receptionist	D

93	Truck Driver .....	D
94	Warehouse Clerk .....	C
95	Watchman .....	B
96	Welder .....	F
97	On and after the first day of July, one thousand nine	
98	hundred eighty-four, the minimum monthly pay for each	
99	service employee whose employment is for a period of more	
100	than three and one-half hours a day shall be at least the	
101	amounts indicated in the "state minimum pay scale" as set	
102	forth in this section, and the minimum monthly pay for each	
103	service employee whose employment is for a period of three	
104	and one-half hours or less a day shall be at least one half the	
105	amount indicated in the "state minimum pay scale" set	
106	forth in this section.	
107	Any service employee required to work on any legal	
108	school holiday shall be paid at a rate one and one-half times	
109	his usual hourly rate.	

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## CHAPTER 65

(Com. Sub. for H. B. 1794—By Mr. Speaker, Mr. See)

(Passed March 6, 1984; in effect from passage. Approved by the Governor.)

AN ACT to repeal sections four-b, four-c, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two and forty-three, article eleven, chapter eighteen 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 eleven-c, all relating to the West Virginia University medical center; authorizing the West Virginia board of regents to enter into a long-term lease and agreement and to otherwise contract with a nonstock, not-for-profit corporation, to be formed under the general corporation laws of the state; certain requirements with respect to such corporation; the directors of such corporation and their appointment; setting forth required pro-

visions of such agreement, including the date thereof; requiring the payment by the West Virginia board of regents to such corporation of sums on deposit in specified accounts, as reflected on the financial ledgers of West Virginia university, not to exceed three million, four hundred thousand dollars; the assignment to such corporation of other assets of the West Virginia University hospital; the letting of an interest in the existing West Virginia University hospital prior to completion of new facilities by such corporation and a long-term leasehold interest in a proposed site in Monongalia County, West Virginia, for such new facilities; requiring the board to acquire such corporation's agreement to provide space in such new facilities for educational and research purposes; to provide an annual allowance for residents' and interns' expenses and an annual clinical teaching subsidy; to provide other property and services to be specified in such agreement; to assume certain liabilities of the West Virginia board of regents relating to the West Virginia University hospital; stating liabilities not to be so assumed; relating to the existing employees of the West Virginia board of regents at the West Virginia University hospital; exempting such agreement and other transactions from bidding, public sale and intragovernmental approvals otherwise required by said code; requiring the audit of certain transactions entered into by the board and the corporation; certain requirements with respect to conflicts of interest; penalties for failure to file required statement of conflict of interest; requiring that the board be informed as to such conflicts; providing that article shall not waive the sovereign immunity of this state; prohibiting the pledging of the credit of the state with respect to any such agreements; and providing for the severability and liberal construction of the provisions of said article.

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

That sections four-b, four-c, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two and forty-three, article eleven, chapter eighteen 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 eleven-c, to read as follows:

**ARTICLE 11C. LEASE AND AGREEMENT OF WEST VIRGINIA  
BOARD OF REGENTS RELATING TO WEST VIR-  
GINIA UNIVERSITY HOSPITAL.**

§18-11C-1. Definitions.

§18-11C-2. Findings.

§18-11C-3. Board authorized to contract with corporation; description to be met by corporation.

§18-11C-4. Agreement; required provisions.

§18-11C-5. Exemption from certain requirements; audit.

§18-11C-6. Conflicts of interest; statement; penalties.

§18-11C-7. No waiver of sovereign immunity.

§18-11C-8. Not obligation of the state.

§18-11C-9. Sections and provisions severable.

§18-11C-10. Liberal construction.

**§18-11C-1. Definitions.**

1 The following words used in this article shall, unless the  
2 context clearly indicates a different meaning, be construed  
3 as follows:

4 (a) "Agreement" means the long-term lease and agreement  
5 to be entered into between the board and the corporation  
6 pursuant to section four of this article.

7 (b) "Assets" means all assets of the board constituting  
8 tangible and intangible personal property credited to the  
9 hospital on the financial ledgers and equipment inventories  
10 of the university at the transfer date, and as more particularly  
11 or additionally identified or supplemented in the agreement,  
12 excluding all hospital funds deposited with the state treasurer.

13 (c) Notwithstanding section one, article one of this chapter,  
14 "board" means the West Virginia board of regents.

15 (d) "Corporation" means the nonstock, not-for-profit cor-  
16 poration to be established under the general corporation laws  
17 of the state, which meets the description prescribed by section  
18 three of this article.

19 (e) "Corporation employees" means employees of the cor-  
20 poration.

21 (f) "Directors" means the board of directors of the cor-  
22 poration.

23 (g) "Existing facilities" means the West Virginia University  
24 hospital and clinics, other than those used for student health  
25 and family practice, presently existing at the West Virginia  
26 University medical center in Morgantown and owned and  
27 operated by the board.

28 (h) "Health science schools" means the schools of medicine,  
29 dentistry, pharmacy and nursing and any other schools at  
30 the university deemed by the board to be health sciences.

31 (i) "Hospital" means the in-patient and out-patient health  
32 care services of the board, other than those used for student  
33 health services and family practice clinics, operated in con-  
34 nection with the university, consisting of the existing facilities  
35 and any other health care service components of the West  
36 Virginia University medical center at Morgantown rendering  
37 patient care services and more particularly identified by the  
38 agreement.

39 (j) "Liabilities" means all liabilities, except those specific-  
40 ally excluded by section four of this article, credited to the  
41 hospital on the financial ledgers of the university at the trans-  
42 fer date and as more particularly or additionally identified,  
43 supplemented or limited in the agreement.

44 (k) "Medical personnel" means both university personnel  
45 and corporation employees.

46 (l) "New facilities" means a new hospital facility and out-  
47 patient clinics, appurtenant facilities, equipment and necessary  
48 services to be acquired, built, operated or contracted for by  
49 the corporation on property leased from the board within  
50 Monongalia County, West Virginia, pursuant to the agree-  
51 ment.

52 (m) "Transfer date" means the first day of July, one thous-  
53 and nine hundred eighty-four, or any later date agreed upon  
54 by the board and the corporation and filed with the secre-  
55 tary of state.

56 (n) "University" means West Virginia University.

57 (o) "University personnel" means those employees of the  
58 board or the university for whose services the corporation  
59 contracts with the board or the university, as appropriate.



**§18-11C-2. Findings.**

1 It is hereby found and determined that:

2 (a) The purposes of the existing facilities are to facilitate  
3 the clinical education and research of the health science  
4 schools and to provide patient care, including specialized ser-  
5 vices not widely available elsewhere in West Virginia. The  
6 eventual termination of such services in lieu of replacement  
7 or modernization would create an unreasonable hardship on  
8 patients in the area and throughout the state.

9 (b) These purposes separately and collectively serve the  
10 highest public interest and are essential to the public health  
11 and welfare, but must be realized in the most efficient manner  
12 and at the lowest cost practicable and consistent with these  
13 purposes.

14 (c) The existing facilities require substantial renovation,  
15 and it is necessary and appropriate and in the best interests  
16 of the state and the citizens thereof that a replacement facility  
17 be built as soon as possible instead of such renovation.

18 (d) It is unnecessarily costly and administratively cumber-  
19 some for the board to finance, manage and carry out the  
20 patient care activities of an academic institution within the  
21 existing framework of a state agency. Such patient care  
22 operations are more efficiently served by contemporary legal,  
23 management and procedural structures utilized by similarly  
24 situated private entities throughout the nation.

25 (e) It is fiscally desirable that the state separate the busi-  
26 ness and service functions of the hospital from the educa-  
27 tional functions of the health science schools, that the board  
28 cease operation of the existing facilities, that the board trans-  
29 fer such operations to the corporation, that the board pay  
30 certain existing sums and assign the assets and certain lease-  
31 hold interests to the corporation in order to acquire the  
32 corporation's agreement to provide certain space and services  
33 and to assume the liabilities, that the agreement and certain  
34 other contractual relationships between the board and the  
35 corporation be authorized, and that the existing facilities  
36 operated by the corporation, and subsequently the new facili-

37 ties owned and operated by the corporation, be self-sufficient  
38 and will remove the tax burden from the state.

39 (f) A not-for-profit corporate structure with appropriate  
40 governance consistent with the delivery of health care to the  
41 patient and academic need of the university shall be the best  
42 means of assuring prudent financial management and the  
43 future economy of operation under rapidly changing market  
44 conditions, regulation and reimbursement.

45 (g) The interests of the citizens of the state will be best  
46 met by the board's entering into and carrying out the pro-  
47 visions of the agreement as soon as possible, to provide in-  
48 dependence and flexibility of management and funding while  
49 enabling the state's tertiary health care and health science  
50 education needs to be better served.

**§18-11C-3. Board authorized to contract with corporation; de-  
scription to be met by corporation.**

1 The board is hereby authorized to enter into the agreement  
2 and any other contractual relationships authorized by this  
3 article with the corporation, but only if the corporation meets  
4 the following description:

5 (a) The directors of the corporation, all of whom shall be  
6 voting, shall consist of the president of the university, who  
7 shall serve ex officio as chairman of the directors, the presi-  
8 dent of the board or his designee, the vice chancellor for health  
9 affairs of the board, the vice president for health sciences of  
10 the university, the vice president for administration and finance  
11 of the university, the chief of the medical staff of the hospital,  
12 the dean of the school of medicine of the university, the dean  
13 of the school of nursing of the university and the chief execu-  
14 tive officer of the corporation, as ex officio members of the  
15 directors, a representative elected at large by the corporation  
16 employees and seven directors to be appointed by the governor,  
17 subject to confirmation by the senate of the state Legislature,  
18 which seven appointed directors shall be selected in confor-  
19 mance with the provisions of section six-a, article five-b, chap-  
20 ter sixteen of this code: *Provided*, That said seven directors  
21 shall be appointed to six year terms, but no more than two such  
22 members shall be from the same congressional district: *Pro-*

23 *vided, however,* That of the seven directors so appointed by the  
24 governor for terms beginning the year one thousand nine hun-  
25 dred eighty-four, three such appointments shall be for a term of  
26 two years, two shall be for a term of four years, and two shall  
27 be for a term of six years.

28 (b) The audited records of the corporation shall be re-  
29 ported publicly and to the joint committee on government and  
30 finance at least annually.

31 (c) Upon liquidation of the corporation, the assets of the  
32 corporation shall be transferred to the board for the benefit of  
33 the university.

**§18-11C-4. Agreement; required provisions.**

1 Notwithstanding section three, article twenty-three of this  
2 chapter, or section ten, article three, chapter twelve of this  
3 code, or any other provision of this code to the contrary, the  
4 board is hereby authorized to enter into the agreement with the  
5 corporation, which agreement shall contain the following pro-  
6 visions, subject to further specification as shall be mutually  
7 agreed upon by the board and the corporation:

8 (a) On the transfer date, the board shall disburse and pay  
9 to the corporation the sums on deposit in the following ac-  
10 counts as reflected on the financial ledgers of the university:

11 (i) That portion of accounts numbered 928000, 928001,  
12 928002 and 928003 which are made up from hospital revenue;

13 (ii) The capital reserve account numbered 9285, which  
14 is accumulated through the capital surcharge on patient re-  
15 cepts;

16 (iii) The cafeteria account numbered 8612330000;

17 (iv) The kidney reimbursement account numbered  
18 8610108810;

19 (v) The general stores account numbered 8610601230;

20 (vi) The home dialysis account numbered 8610601450;

21 (vii) The vending income account numbered 8610600180;

22 (viii) The optical shop account numbered 8610601350;

23 (ix) The emergency medical education account numbered  
24 8610601460;

25 (x) The radiation safety account numbered 8610600320; and

26 (xi) The Monongalia General Hospital AN account number-  
27 ed 8610106530: *Provided*, That the aggregate amount so paid  
28 to the corporation shall not exceed three million, four hun-  
29 dred thousand dollars; and shall assign to the corporation all  
30 the assets, a leasehold interest in the existing facilities prior to  
31 completion of the new facilities and a leasehold interest in the  
32 proposed site for the new facilities, which site shall be mutually  
33 agreed upon by the board and the corporation, for a period  
34 not to exceed ninety-nine years, all in order to acquire the  
35 corporation's agreement to provide not less than one hundred  
36 thousand square feet of space in the new facilities for educa-  
37 tional and research purposes, to provide an annual allowance  
38 of not less than four million dollars for residents' and interns'  
39 expenses and an annual clinical teaching subsidy of not less  
40 than six million dollars, to provide other property or services  
41 to be specified in the agreement and to assume the liabilities,  
42 including the accounts payable, but excluding liabilities for  
43 other than accrued sick leave, accrued annual leave and unem-  
44 ployment compensation benefits relating to corporation em-  
45 ployees arising prior to the transfer date and excluding other  
46 liabilities of a contingent nature. **Effective on the transfer**  
47 **date, the corporation shall assume responsibility for and shall**  
48 **defend, indemnify and hold harmless the university, the board**  
49 **and the state with respect to all liabilities and duties of the**  
50 **university or the board pursuant to contracts and agreements**  
51 **for commodities, services and supplies utilized by the hospital,**  
52 **and all claims for breach of contract resulting from the corp-**  
53 **oration's action or failure to act after the transfer date. The**  
54 **value and the adequacy of the services by and other agree-**  
55 **ments of the corporation shall be mutually agreed upon by**  
56 **the board and the corporation. Upon completion of the con-**  
57 **struction and occupation of the new facilities the least upon the**  
58 **existing facilities shall terminate.**

59 (b) On and after the transfer date, the corporation shall  
60 lease, manage and operate the existing facilities, subject to the

61 provisions of this article, and shall construct, own and operate  
62 the new facilities, and shall have the power to encumber and  
63 otherwise deal with the assets, without limitation or regard to  
64 their sources: *Provided*, That the corporation shall have no  
65 power to mortgage or otherwise encumber the real property  
66 constituting a part of the existing facilities.

67 (c) The existing facilities and, subsequently, the new fa-  
68 cilities will serve as the primary clinical setting for health  
69 science school students to receive educational and research  
70 experiences. The university faculty shall have exclusive medi-  
71 cal and dental staff privileges at the existing facilities and,  
72 subsequently, at the new facilities.

73 (d) The corporation may utilize both corporation em-  
74 ployees and university personnel. On or after the transfer date,  
75 each university employee working in the hospital shall elect  
76 to be either a corporation employee or a part of university  
77 personnel. No university employee may be required to become  
78 an employee of the corporation as the condition of employ-  
79 ment or promotion. All university personnel are university  
80 employees in all respects.

81 (e) If reasonable progress toward construction of new  
82 facilities has not been made by the first day of July, one  
83 thousand nine hundred eighty-five, the agreement shall auto-  
84 matically terminate, and the transfers of operations of the  
85 existing facilities and the assets and liabilities under the agree-  
86 ment shall revert to the board and the university.

87 (f) After completion of construction of the new facilities  
88 and vacation of the existing facilities by the corporation, the  
89 board and the university may not use the existing facilities or  
90 otherwise provide services competing with the new facilities:  
91 *Provided*, That the existing facilities may be used for student  
92 health and family practice clinics and for medical support  
93 services and other appropriate university purposes which will  
94 not compete with the services offered by the new facilities.

95 (g) The new facilities shall be constructed by the corpora-  
96 tion in a manner so as to provide sufficient space for conduct-  
97 ing clinical education for the health science schools.

**§18-11C-5. Exemption from certain requirements; audit.**

1 In order, as expeditiously as possible, to cease operation of  
2 the existing facilities by the board, to transfer the operations  
3 of the existing facilities and the assets and liabilities to the  
4 corporation, which will construct the new facilities, at the same  
5 time maintaining the educational services of an operating hos-  
6 pital facility, the transactions provided by this article shall be  
7 exempt from the bidding and public sale requirements, from  
8 the approval of contractual agreements by the department of  
9 finance and administration or the attorney general and from  
10 the requirements of chapter five-a of this code. The trans-  
11 actions provided by this article shall be subject to an audit  
12 by an independent auditor mutually agreed upon by the board  
13 and the corporation.

**§18-11C-6. Conflicts of interest; statement; penalties.**

1 Notwithstanding any other provisions of this code to the  
2 contrary, officers and employees of the board and the univer-  
3 sity may hold appointments to offices of the corporation and  
4 be members of the boards of directors, or officers or employees  
5 of other entities contracting with either the corporation or the  
6 board or the university. The board and the directors must be  
7 informed of such appointments annually, and either the board  
8 or the directors may require that an appointment be terminated  
9 to avoid an actual or potential conflict of interest as determined  
10 by the board: *Provided*, That every member of the board  
11 shall, between January one and January fifteen of each year,  
12 file a written statement, which shall be fully available for pub-  
13 lic disclosure, with the chairman of the board, under oath,  
14 setting forth:

15 (1) The name of every person, firm, corporation, associa-  
16 tion, partnership, sole proprietorship or other business asso-  
17 ciation in which he, his spouse or his unemancipated minor  
18 child or children, in his or their own name or beneficially,  
19 own at least ten percent of such business entity, or of which  
20 he or they are an officer, director, agent, attorney, representa-  
21 tive, employee, partner or employer, and which to his actual  
22 knowledge is then furnishing or within the previous calendar  
23 year has furnished to the state, the board of regents, West

24 Virginia University or the corporation defined in this article,  
25 commodities or printing as those terms are defined in section  
26 one, article one, chapter five-a of this code.

27 (2) Any other interest or relationship which might reason-  
28 ably be expected to be affected by action taken by the board  
29 of such corporation or which in the public interest should be  
30 disclosed.

31 Those persons to whom the provisions of subdivisions (1)  
32 and (2) above are not applicable shall file a written statement  
33 to that effect with the chairman of the board at the same time  
34 above specified.

35 Any person who shall fail or refuse to file a written state-  
36 ment under oath as required above shall by operation of law  
37 be automatically removed from such board until such state-  
38 ment is filed.

39 Any person who shall intentionally file a false statement  
40 shall be guilty of a misdemeanor, and, upon conviction, shall  
41 be confined in jail not less than six months nor more than  
42 one year.

**§18-11C-7. No waiver of sovereign immunity.**

1 Nothing contained in this article shall be deemed or con-  
2 strued to waive or abrogate in any way the sovereign im-  
3 munity of the state or to deprive the board, the university  
4 or any officer or employee thereof of sovereign immunity.

**§18-11C-8. Not obligation of the state.**

1 Obligations of the corporation shall not constitute debts or  
2 obligations of the university, the board or the state.

**§18-11C-9. Sections and provisions severable.**

1 The sections of this article, and the provisions and parts  
2 of said sections, are severable, and it is the intention to confer  
3 the whole or any part of the powers provided for in this  
4 article, and, if any of said sections, or the provisions or parts  
5 of any said sections, or the application thereof to any person  
6 or circumstance, are for any reason held unconstitutional or  
7 invalid, it is the intention that the remaining sections of this

8 article, and the remaining provisions or parts of any said  
9 sections, shall remain in full force and effect.

**§18-11C-10. Liberal construction.**

1 This article, being necessary for the health, safety, con-  
2 venience and welfare of the people of the state, shall be  
3 liberally construed to effectuate the purposes hereof.

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## CHAPTER 66

(H. B. 1851—(By Delegate Schifano and Delegate Manchin)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new articles, designated articles eleven-d and eleven-e, relating generally to the issuance of revenue bonds and notes by the West Virginia board of regents to finance the cost of any or all of constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the football stadium, the athletic facilities building or related facilities at West Virginia University and the football stadium or other athletic facilities at Marshall University; payment of the principal of and premium, if any, and interest on said revenue bonds and notes; requiring the written approval of the director of athletics; allowing pledge to bonds of all or any portion of the moneys derived from admission fees, other than student admission fees, to athletic contests at West Virginia University and Marshall University; bonds and notes not to be considered debt of state, county, municipality or any political subdivision; and to the interpretation of said article.

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

That chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new articles, designated articles eleven-d and eleven-e, to read as follows:



**Article****11D. Revenue Bonds for West Virginia University Athletic Facilities.****11E. Revenue Bonds for Marshall University Athletic Facilities.****ARTICLE 11D. REVENUE BONDS FOR WEST VIRGINIA UNIVERSITY ATHLETIC FACILITIES.**

- §18-11D-1. Definition of board; cost of constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the football stadium, the athletic facilities building or related facilities of West Virginia University to be financed by revenue bonds or notes.
- §18-11D-2. Trustee for bondholders or noteholders; contents of trust agreement.
- §18-11D-3. Payment of principal of and premium, if any, and interest on bonds and notes from all or any portion of the moneys derived from admission fees to athletic contests at West Virginia University; approval of director of athletics.
- §18-11D-4. Enforcement payment and validity of bonds and notes.
- §18-11D-5. Pledges; time; liens; recordation.
- §18-11D-6. Refunding bonds.
- §18-11D-7. Purchase and cancellation of bonds or notes.
- §18-11D-8. Federal and private assistance.
- §18-11D-9. Vested rights; impairment.
- §18-11D-10. Bonds and notes not debt of state, county, municipality or any political subdivision; expenses incurred pursuant to article.
- §18-11D-11. Negotiability of bonds and notes.
- §18-11D-12. Bonds and notes legal investments.
- §18-11D-13. Exemption from taxation.
- §18-11D-14. Article regarded as supplementary.
- §18-11D-15. Liberal construction.

**§18-11D-1. Definition of board; cost of constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the football stadium, the athletic facilities building or related facilities of West Virginia University to be financed by revenue bonds or notes.**

1 (a) Notwithstanding the provisions of section one, article  
2 one of this chapter, the word "board," when used in this  
3 article, means the West Virginia board of regents.

4 (b) For the purpose of financing the cost of any or all of  
5 the following: Constructing, reconstructing, remodeling, re-  
6 pairing, improving, extending, equipping or furnishing the  
7 football stadium, the athletic facilities building or related

8 facilities of West Virginia University, the board periodically  
9 may issue negotiable bonds or notes of the state in a principal  
10 amount, not in excess of seven and one-half million dollars,  
11 which, in the opinion of the board, shall be necessary to fi-  
12 nance said cost. Such cost shall include, but not be limited to,  
13 the following: The cost of such construction, reconstruction,  
14 remodeling, repair, improvement, extension, equipment or fur-  
15 nishings; studies and surveys; plans, specifications, architec-  
16 tural and engineering services; legal, organizational, marketing  
17 or other special services; interest and carrying charges prior to,  
18 during and for six months after completion of such construc-  
19 tion, reconstruction, remodeling, repair, improvement, exten-  
20 sion, equipment or furnishing; the costs of issuing the bonds  
21 or notes; and a reasonable reserve for payment of the principal  
22 of and interest on the bonds or notes.

23 (c) The board periodically may issue renewal notes of the  
24 state, may issue revenue bonds of the state to pay notes and, if  
25 it considers refunding expedient, may refund or refund in  
26 advance bonds issued by the board by the issuance of new  
27 bonds of the state, pursuant to the requirements of section six  
28 of this article.

29 (d) Except as may otherwise be expressly provided by the  
30 board, every issue of bonds or notes by it shall be special  
31 obligations of the state, payable solely from the revenues or  
32 other moneys pledged therefor.

33 (e) The bonds and the notes shall be authorized by reso-  
34 lution of the board, shall bear such date and shall mature at  
35 such time or times, in the case of any such note or any re-  
36 newals thereof not exceeding five years from the date of issue  
37 of such original note, and in the case of any such bond not  
38 exceeding forty years from the date of issue, as such resolution  
39 may provide. The bonds and notes shall bear interest at such  
40 rate or rates, be in such denominations, be in such form,  
41 either coupon or registered, carry such registration privileges,  
42 be payable in such medium of payment and at such place or  
43 places and be subject to such terms of redemption as the board  
44 may authorize. The bonds and notes may be sold by the board  
45 in the manner and at or not less than the price the board de-  
46 termines. The bonds and notes shall be executed by the gov-

47 error and the president of the board, both of whom may use  
48 facsimile signatures. The great seal of the state or a facsimile  
49 thereof shall be affixed thereto or printed thereon and at-  
50 tested, manually or by facsimile signature, by the secretary of  
51 state, and any coupons attached thereto shall bear the manual  
52 or facsimile signature of the president of the board. In case  
53 any officer whose signature, or a facsimile of whose signature,  
54 appears on any bonds, notes or coupons ceases to be such  
55 officer before delivery of such bonds or notes, such signature  
56 or facsimile is nevertheless sufficient for all purposes the same  
57 as if he had remained in office until such delivery; and, in  
58 case the seal of the state has been changed after a facsimile  
59 has been imprinted on such bonds or notes, such facsimile  
60 seal will continue to be sufficient for all purposes.

61 (f) A resolution authorizing bonds or notes or an issue  
62 of bonds or notes under this article may contain provisions,  
63 which shall be a part of the contract with the holders of the  
64 bonds or notes, as to any or all of the following:

65 (1) With the written approval of the director of athletics  
66 at West Virginia University, which approval shall be specific  
67 as to such moneys pledged, pledging and creating a lien on all  
68 or any portion of the moneys derived from admission fees to  
69 athletic contests at West Virginia University to secure the pay-  
70 ment of the bonds or notes or of any issue of bonds or notes,  
71 subject to those agreements with bondholders or noteholders  
72 which then exist;

73 (2) Pledging and creating a lien on any loan, grant or  
74 contribution to be received from the federal, state or local  
75 government or other source;

76 (3) Setting aside of reserves or sinking funds and the regu-  
77 lation and disposition thereof;

78 (4) Limitations on the purpose to which the proceeds of  
79 sale of bonds or notes may be applied and pledging the  
80 proceeds to secure the payment of the bonds or notes or of  
81 any issue of the bonds or notes;

82 (5) Limitations on the issuance of additional bonds or  
83 notes and the terms upon which additional bonds or notes may  
84 be issued and secured;

85 (6) The procedure by which the terms of a contract with  
86 the bondholders or noteholders may be amended or abrogated,  
87 the amount of bonds or notes the holders of which must  
88 consent thereto and the manner in which the consent may be  
89 given; and

90 (7) Vesting in a trustee or trustees the property, rights,  
91 powers, remedies and duties which the board considers neces-  
92 sary or convenient.

93 (g) Prior to the preparation of definitive bonds or notes,  
94 the board may under like restrictions, issue temporary bonds  
95 or notes, with or without coupons, exchangeable for defini-  
96 tive bonds or notes, as the case may be, upon the issuance  
97 of the latter.

**§18-11D-2. Trustee for bondholders or noteholders; contents of trust agreement.**

1 In the discretion of the board, any bonds, refunding bonds  
2 or notes issued by the board may be secured by a trust  
3 agreement between the board and a corporate trustee, which  
4 trustee may be any trust company or banking institution  
5 having the powers of a trust company within or without the  
6 state. Any such trust agreement may contain provisions as  
7 set forth in section one of this article with respect to the  
8 resolution. All expenses incurred in carrying out such agree-  
9 ment may be treated as a part of the cost of constructing,  
10 reconstructing, remodeling, repairing, improving, extending,  
11 equipping or furnishing the football stadium, the athletic  
12 facilities building or related facilities of West Virginia Univer-  
13 sity affected by such agreement.

**§18-11D-3. Payment of principal of and premium, if any, and interest on bonds and notes from all or any portion of the moneys derived from admission fees to athletic contests at West Virginia University; approval of director of athletics.**

1 Whenever bonds or notes are issued for financing the cost  
2 of any or all of the following: Constructing, reconstructing,  
3 remodeling, repairing, improving, extending, equipping or  
4 furnishing the football stadium, the athletic facilities building

5 or related facilities of West Virginia University, the board  
6 may, with the written approval of the director of athletics  
7 at West Virginia University, pledge to the payment of the  
8 principal of and premium, if any, and interest on said bonds  
9 or notes all or any portion of the moneys derived from ad-  
10 mission fees to athletic contests and deposited into the ath-  
11 letic accounts at West Virginia University: *Provided*, That  
12 said approval of the director of athletics must specify all or  
13 any said portions of the money to be pledged: *Provided, how-*  
14 *ever*, That no fees paid by students other than the regular  
15 student activity fee may be so pledged.

**§18-11D-4. Enforcement of payment and validity of bonds and notes.**

1 (a) The provisions of this article and any resolution or  
2 trust agreement shall continue in effect until the principal  
3 of and interest on the bonds or notes of the state issued by  
4 the board have been fully paid, and the duties of the board  
5 under this article and any resolution or trust agreement  
6 shall be enforceable by any bondholder or noteholder by man-  
7 damus or other appropriate action in any court of competent  
8 jurisdiction.

9 (b) The resolution authorizing the bonds or notes shall  
10 provide that such bonds or notes shall contain a recital  
11 that they are issued pursuant to this article, which recital  
12 shall be conclusive evidence of their validity and of the regu-  
13 larity of their issuance.

**§18-11D-5. Pledges; time; lien; recordation.**

1 Any pledge made by the board shall be valid and binding  
2 from the time the pledge is made: *Provided*, That the pledge by  
3 the board of all or any portion of the moneys derived from  
4 admission fees to athletic contests and deposited into the ath-  
5 letic accounts at West Virginia University shall be subject to  
6 the written approval of the director of athletics at West Vir-  
7 ginia University. The moneys so pledged and thereafter re-  
8 ceived by the board shall immediately be subject to the lien  
9 of such pledge without any physical delivery thereof or further  
10 act. The lien of any such pledge shall be valid and binding  
11 as against all parties having claims of any kind in tort, con-

12 tract or otherwise against the board, irrespective of whether  
13 such parties have notice thereof.

**§18-11D-6. Refunding bonds.**

1 Any bonds issued under the provisions of this article and  
2 at any time outstanding may at any time and from time to  
3 time be refunded by the board by the issuance of refunding  
4 bonds of the state in such amount as it may deem necessary  
5 to refund the principal of the bonds so to be refunded, to-  
6 gether with an unpaid interest thereon; to provide additional  
7 funds for the purposes authorized by this article; and to pay  
8 any premiums and commissions necessary to be paid in con-  
9 nection therewith. Any such refunding may be effected whether  
10 the bonds to be refunded shall have then matured or shall  
11 thereafter mature, either by sale of the refunding bonds and  
12 the application of the proceeds thereof for the redemption of  
13 the bonds to be refunded thereby, or, together with the interest  
14 on such proceeds, for the payment of the bonds to be refunded  
15 thereby and the interest thereon as the same come due, or by  
16 exchange of the refunding bonds for the bonds to be refunded  
17 thereby: *Provided*, That the holders of any bonds to be re-  
18 funded shall not be compelled without their consent to sur-  
19 render their bonds for payment or exchange prior to the date  
20 on which they are payable or, if they are called for redemption,  
21 prior to the date on which they are by their terms subject to  
22 redemption. Any refunding bonds issued under the authority  
23 of this section shall be payable from the revenues out of which  
24 the bonds to be refunded thereby were payable, from other  
25 moneys or from the principal of and interest on or other in-  
26 vestment yield from investments or proceeds of bonds or other  
27 applicable funds and moneys, including investments of pro-  
28 ceeds of any refunding bonds, and shall be subject to the pro-  
29 visions contained in and shall be secured in accordance with  
30 this article.

**§18-11D-7. Purchase and cancellation of bonds or notes.**

1 The board, subject to such agreements with bondholders  
2 or noteholders as may then exist, shall have the power, out  
3 of any funds available therefor, to purchase bonds, including  
4 refunding bonds or notes of the state issued by the board.

5 If the bonds or notes are then redeemable, the price of such  
6 purchase shall not exceed the redemption price then applicable  
7 plus accrued interest to the next interest payment date there-  
8 on. If the bonds or notes are not then redeemable, the price  
9 of such purchase shall not exceed the redemption price ap-  
10 plicable on the first date after such purchase upon which the  
11 bonds or notes become subject to redemption plus accrued in-  
12 terest to such date. Upon such purchase, such bonds or notes  
13 shall be canceled.

**§18-11D-8. Federal and private assistance.**

1 The board is authorized and empowered to accept loans or  
2 grants or temporary advances for the purpose of paying part  
3 or all of the cost of constructing, reconstructing, remodeling,  
4 repairing, improving, extending, equipping or furnishing the  
5 football stadium, the athletic facilities building or related  
6 facilities of West Virginia University and the other purposes  
7 herein authorized from the United States of America or such  
8 federal or public agency or department of the United States or  
9 any private agency, corporation or individual, which loans or  
10 temporary advances may be repaid out of the proceeds of  
11 the bonds authorized to be issued under the provisions of this  
12 article, and to enter into the necessary contracts and agree-  
13 ments to carry out the purposes hereof with the United States  
14 of America or such federal or public agency or department of  
15 the United States or with any private agency, corporation or  
16 individual.

**§18-11D-9. Vested rights; impairment.**

1 The state pledges and agrees with the holders of any bonds  
2 or notes issued under this article that the state will not limit  
3 or alter the rights vested in the board to fulfill the terms  
4 of any agreements made with the holders thereof, or in any  
5 way impair the rights and remedies of the holders, until the  
6 bonds or notes, together with the interest thereon, and all  
7 costs and expenses in connection with any action or pro-  
8 ceeding by or on behalf of such holders, are fully met and  
9 discharged. The board is authorized to include its pledge  
10 and agreement of the state in any agreement with the holders  
11 of such bonds or notes.

**§18-11D-10. Bonds and notes not debt of state, county, municipality or any political subdivision; expenses incurred pursuant to article.**

1 Bonds, refunding bonds and notes issued under the authority  
2 of this article and any coupons in connection therewith shall  
3 not constitute a debt or a pledge of the faith and credit  
4 or taxing power of the state or of any county, municipality  
5 or any other political subdivision of the state, and the holders  
6 and owners thereof shall have no right to have taxes levied  
7 by the Legislature or the taxing authority of any county,  
8 municipality or any other political subdivision of the state  
9 for the payment of the principal thereof or interest thereon,  
10 but such bonds and notes shall be payable solely from the  
11 revenues and funds pledged for their payment as authorized  
12 by this article: *Provided*, That notes issued in anticipation  
13 of the issuance of bonds or bonds being refunded may be  
14 paid from the proceeds of bonds which are payable solely  
15 from revenues and funds pledged for their payment as autho-  
16 rized by this article. All such bonds and notes shall contain  
17 on the face thereof a statement to the effect that the bonds  
18 or notes, as to both principal and interest, are not debts of  
19 the state or any county, municipality or political subdivision  
20 thereof, but are payable solely from revenues and funds  
21 pledged for their payment.

22 All expenses incurred in carrying out the provisions of  
23 this article shall be payable solely from funds provided  
24 under the authority of this article. This article does not  
25 authorize the board to incur indebtedness or liability on  
26 behalf of or payable by the state or any county, municipality  
27 or any other political subdivision.

**§18-11D-11. Negotiability of bonds and notes.**

1 Other provisions of this code to the contrary notwithstand-  
2 ing, the bonds or notes authorized to be issued by this article  
3 are negotiable instruments within the meaning of and for all  
4 the purposes of the uniform commercial code, subject only  
5 to the provisions of the bonds or notes for registration.

**§18-11D-12. Bonds and notes legal investments.**

1 The provisions of sections nine and ten, article six, chapter



2 twelve of this code to the contrary notwithstanding, the bonds  
3 and notes of the state issued by the board are securities in  
4 which all public officers and bodies of the state, including the  
5 West Virginia state board of investments, all municipalities and  
6 other political subdivisions of the state, all insurance companies  
7 and associations and other persons carrying on an insurance  
8 business, including domestic for life and domestic not for life  
9 insurance companies, all banks, trust companies, societies for  
10 savings, building and loan associations, savings and loan associ-  
11 ations, deposit guarantee associations and investment compan-  
12 ies, all administrators, guardians, executors, trustees and other  
13 fiduciaries and all other persons whatsoever who are autho-  
14 rized to invest in bonds or other obligations of the state may  
15 properly and legally invest funds, including capital, in their  
16 control or belonging to them.

**§18-11D-13. Exemption from taxation.**

1 The exercise of the powers granted to the board by this  
2 article will be in all respects for the benefit of the students and  
3 the faculty and other employees at West Virginia University  
4 and the other people of the state, for the improvement of their  
5 safety, convenience and welfare, and is a public purpose. As the  
6 operation and maintenance of the football stadium, the athletic  
7 facilities building and related facilities at West Virginia Uni-  
8 versity constitute the performance of essential governmental  
9 functions, the board shall not be required to pay any taxes  
10 or assessments upon any property acquired or used by the  
11 board or upon the income therefrom. All bonds and notes of  
12 the state issued by the board, and all interest and income  
13 thereon, shall be exempt from all taxation by the state and  
14 any county, municipality, political subdivision or agency there-  
15 of, except inheritance taxes.

**§18-11D-14. Article regarded as supplementary.**

1 This article shall be deemed to provide an additional and  
2 alternative method for the doing of the things authorized here-  
3 by and shall be regarded as supplementary and additional to  
4 the powers conferred by other laws.

**§18-11D-15. Liberal construction.**

1 This article, being necessary for the safety, convenience and

- 2 welfare of the students and the faculty and other employees at  
 3 West Virginia University and the other people of the state,  
 4 shall be liberally construed to effectuate the purposes hereof.

**ARTICLE 11E. REVENUE BONDS FOR MARSHALL UNIVERSITY  
 ATHLETIC FACILITIES.**

- §18-11E-1. Definition of board; cost of constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the football stadium or other athletic facilities of Marshall University to be financed by revenue bonds or notes.
- §18-11E-2. Trustee for bondholders or noteholders; contents of trust agreement.
- §18-11E-3. Payment of principal of and premium, if any, and interest on bonds and notes from all or any portion of the moneys derived from admission fees to athletic contests at Marshall University; approval of director of athletics.
- §18-11E-4. Enforcement of payment and validity of bonds and notes.
- §18-11E-5. Pledges; time; liens; recordation.
- §18-11E-6. Refunding bonds.
- §18-11E-7. Purchase and cancellation of bonds or notes.
- §18-11E-8. Federal and private assistance.
- §18-11E-9. Vested rights; impairment.
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**§18-11E-1. Definition of board; cost of constructing, reconstructing, remodeling, repairing, improving, extending, equipping or furnishing the football stadium or other athletic facilities of Marshall University to be financed by revenue bonds or notes.**

- 1 (a) Notwithstanding the provisions of section one, article  
 2 one of this chapter, the word "board," when used in this article  
 3 means the West Virginia board of regents.

- 4 (b) For the purpose of financing the cost of any or all of  
 5 the following: Constructing, reconstructing, remodeling, re-  
 6 pairing, improving, extending, equipping or furnishing the  
 7 football stadium or other athletic facilities of Marshall Uni-  
 8 versity, the board periodically may issue negotiable bonds or

9 notes of the state in a principal amount, not in excess of  
10 fifteen million dollars, which, in the opinion of the board,  
11 shall be necessary to finance said cost. Such cost shall include,  
12 but not be limited to, the following: The cost of such con-  
13 struction, reconstruction, remodeling, repair, improvement, ex-  
14 tension, equipment or furnishings; studies and surveys; plans,  
15 specifications, architectural and engineering services; legal,  
16 organizational, marketing or other special services; interest  
17 and carrying charges prior to, during and for six months after  
18 completion of such construction, reconstruction, remodeling,  
19 repair, improvement, extension, equipment or furnishing; the  
20 costs of issuing the bonds or notes; and a reasonable reserve  
21 for payment of the principal of and interest on the bonds or  
22 notes.

23 (c) The board periodically may issue renewal notes of  
24 the state, may issue revenue bonds of the state to pay notes  
25 and, if it considers refunding expedient may refund or  
26 refund in advance bonds issued by the board by the issuance  
27 of new bonds of the state, pursuant to the requirements of  
28 section six of this article.

29 (d) Except as may otherwise be expressly provided by the  
30 board, every issue of bonds or notes by it shall be special  
31 obligations of the state, payable solely from the revenues  
32 or other moneys pledged therefor.

33 (e) The bonds and the notes shall be authorized by reso-  
34 lution of the board, shall bear such date and shall mature  
35 at such time or times, in the case of any such note or any  
36 renewals thereof not exceeding five years from the date of  
37 issue of such original note, and in the case of any such  
38 bond not exceeding forty years from the date of issue, as  
39 such resolution may provide. The bonds and notes shall  
40 bear interest at such rate or rates, be in such denominations,  
41 be in such form, either coupon or registered, carry such regis-  
42 tration privileges, be payable in such medium of payment  
43 and at such place or places and be subject to such terms of  
44 redemption as the board may authorize. The bonds and notes  
45 may be sold by the board in the manner and at or not less  
46 than the price the board determines. The bonds and notes

47 shall be executed by the governor and the president of the  
48 board, both of whom may use facsimile signatures. The  
49 great seal of the state or a facsimile thereof shall be affixed  
50 thereto or printed thereon and attested, manually or by fac-  
51 simile signature, by the secretary of state, and any coupons  
52 attached thereto shall bear the manual or facsimile signature  
53 of the president of the board. In case any officer whose  
54 signature, or a facsimile of whose signature, appears on any  
55 bonds, notes or coupons ceases to be such officer before  
56 delivery of such bonds or notes, such signature or facsimile  
57 is nevertheless sufficient for all purposes the same as if he  
58 had remained in office until such delivery; and, in case the  
59 seal of the state has been changed after a facsimile has been  
60 imprinted on such bonds or notes, such facsimile seal will  
61 continue to be sufficient for all purposes.

62 (f) A resolution authorizing bonds or notes or an issue of  
63 bonds or notes under this article may contain provisions,  
64 which shall be a part of the contract with the holders of the  
65 bonds or notes, as to any or all of the following:

66 (1) With the written approval of the director of athletics  
67 at Marshall University, which approval shall be specific as  
68 to such moneys pledged, pledging and creating a lien on  
69 all or any portion of the moneys derived from admission  
70 fees to athletic contests at Marshall University to secure the  
71 payment of the bonds or notes or of any issue of bonds or  
72 notes, subject to those agreements with bondholders or note-  
73 holders which then exist;

74 (2) Pledging and creating a lien on any loan, grant or  
75 contribution to be received from the federal, state or local  
76 government or other source;

77 (3) Setting aside of reserves or sinking funds and the  
78 regulation and disposition thereof;

79 (4) Limitations on the purpose to which the proceeds of  
80 sale of bonds or notes may be applied and pledging the pro-  
81 ceeds to secure the payment of the bonds or notes or of any  
82 issue of the bonds or notes;

83 (5) Limitations on the issuance of additional bonds or

84 notes and the terms upon which additional bonds or notes  
85 may be issued and secured;

86 (6) The procedure by which the terms of a contract with  
87 the bondholders or noteholders may be amended or abrogated,  
88 the amount of bonds or notes the holders of which must  
89 consent thereto and the manner in which the consent may be  
90 given; and

91 (7) Vesting in a trustee or trustees the property, rights,  
92 powers, remedies and duties which the board considers neces-  
93 sary or convenient.

94 (g) Prior to the preparation of definitive bonds or notes,  
95 the board may under like restrictions, issue temporary bonds  
96 or notes, with or without coupons, exchangeable for definitive  
97 bonds or notes, as the case may be, upon the issuance of the  
98 latter.

**§18-11E-2. Trustee for bondholders or noteholders; contents of trust agreement.**

1 In the discretion of the board, any bonds, refunding bonds  
2 or notes issued by the board may be secured by a trust agree-  
3 ment between the board and a corporate trustee, which  
4 trustee may be any trust company or banking institution  
5 having the powers of a trust company within or without the  
6 state. Any such trust agreement may contain provisions as  
7 set forth in section one of this article with respect to the  
8 resolution. All expenses incurred in carrying out such agree-  
9 ment may be treated as a part of the cost of constructing,  
10 reconstructing, remodeling, repairing, improving, extending,  
11 equipping or furnishing the football stadium or other athletic  
12 facility at Marshall University affected by such agreement.

**§18-11E-3. Payment of principal of and premium, if any, and interest on bonds and notes from all or any portion of the moneys derived from admission fees to athletic contests at Marshall University; approval of director of athletics.**

1 Whenever bonds or notes are issued for financing the cost  
2 of any or all of the following: Constructing, reconstructing,  
3 remodeling, repairing, improving, extending, equipping or fur-

4 nishing the football stadium or other athletic facilities of  
5 Marshall University, the board may, with the written approval  
6 of the director of the athletics at Marshall University, pledge  
7 to the payment of the principal of and premium, if any, and  
8 interest on said bonds or notes all or any portion of the  
9 moneys derived from admission fees to athletic contests and  
10 deposited into the athletic accounts at Marshall University:  
11 *Provided*, That said approval of the director of athletics must  
12 specify all or any said portions of the moneys to be pledged:  
13 *Provided, however*, That no fees paid by students other than  
14 the regular student activity fee may be so pledged.

**§18-11E-4. Enforcement of payment and validity of bonds and notes.**

1 (a) The provisions of this article and any resolution or  
2 trust agreement shall continue in effect until the principal  
3 of and interest on the bonds or notes of the state issued by  
4 the board have been fully paid, and the duties of the board  
5 under this article and any resolution or trust agreement  
6 shall be enforceable by any bondholder or noteholder by  
7 mandamus or other appropriate action in any court of com-  
8 petent jurisdiction.

9 (b) The resolution authorizing the bonds or notes shall pro-  
10 vide that such bonds or notes shall contain a recital that  
11 they are issued pursuant to this article, which recital shall  
12 be conclusive evidence of their validity and of the regularity  
13 of their issuance.

**§18-11E-5. Pledges; time; liens; recordation.**

1 Any pledge made by the board shall be valid and binding  
2 from the time the pledge is made: *Provided*, That the pledge  
3 by the board of all or any portion of the moneys derived  
4 from admission fees to athletic contests and deposited into  
5 the athletic accounts at Marshall University shall be subject  
6 to the written approval of the director of athletics at Marshall  
7 University. The moneys so pledged and thereafter received  
8 by the board shall immediately be subject to the lien of such  
9 pledge without any physical delivery thereof or further act.  
10 The lien of any such pledge shall be valid and binding as  
11 against all parties having claims of any kind in tort, contract

12 or otherwise against the board irrespective of whether such  
13 parties have notice thereof.

**§18-11E-6. Refunding bonds.**

1 Any bonds issued under the provisions of this article  
2 and at any time outstanding may at any time and from time  
3 to time be refunded by the board by the issuance of refunding  
4 bonds of the state in such amount as it may deem necessary  
5 to refund the principal of the bonds so to be refunded,  
6 together with any unpaid interest thereon; to provide addi-  
7 tional funds for the purposes authorized by this article; and  
8 to pay any premiums and commissions necessary to be paid  
9 in connection therewith. Any such refunding may be effected  
10 whether the bonds to be refunded shall have then matured  
11 or shall thereafter mature, either by sale of the refunding  
12 bonds and the application of the proceeds thereof for the  
13 redemption of the bonds to be refunded thereby, or, together  
14 with the interest on such proceeds, for the payment of the  
15 bonds to be refunded thereby and the interest thereon as the  
16 same come due, or by exchange of the refunding bonds for  
17 the bonds to be refunded thereby: *Provided*, That the holders  
18 of any bonds to be refunded shall not be compelled without  
19 their consent to surrender their bonds for payment or ex-  
20 change prior to the date on which they are payable or, if  
21 they are called for redemption, prior to the date on which  
22 they are by their terms subject to redemption. Any refunding  
23 bonds issued under the authority of this section shall be  
24 payable from the revenues out of which the bonds to be  
25 refunded thereby were payable, from other moneys or from  
26 the principal of and interest on or other investment yield  
27 from investments or proceeds of bonds or other applicable  
28 funds and moneys, including investments of proceeds of any  
29 refunding bonds, and shall be subject to the provisions con-  
30 tained in and shall be secured in accordance with this article.

**§18-11E-7. Purchase and cancellation of bonds or notes.**

1 The board, subject to such agreements with bondholders  
2 or noteholders as may then exist, shall have the power, out  
3 of any funds available therefor, to purchase bonds, including  
4 refunding bonds or notes of the state issued by the board.

5 If the bonds or notes are then redeemable, the price of such  
6 purchase shall not exceed the redemption price then applicable  
7 plus accrued interest to the next interest payment date thereon.  
8 If the bonds or notes are not then redeemable, the price of  
9 such purchase shall not exceed the redemption price applicable  
10 on the first date after such purchase upon which the bonds  
11 or notes become subject to redemption plus accrued interest  
12 to such date. Upon such purchase, such bonds or notes  
13 shall be canceled.

**§18-11E-8. Federal and private assistance.**

1 The board is authorized and empowered to accept loans or  
2 grants or temporary advances for the purpose of paying part  
3 or all of the cost of constructing, reconstructing, remodeling,  
4 repairing, improving, extending, equipping or furnishing the  
5 football stadium or other athletic facilities of Marshall Uni-  
6 versity and the other purposes herein authorized from the  
7 United States of America or such federal or public agency  
8 or department of the United States or any private agency,  
9 corporation or individual, which loans or temporary advances  
10 may be repaid out of the proceeds of the bonds authorized to  
11 be issued under the provisions of this article, and to enter  
12 into the necessary contracts and agreements to carry out the  
13 purposes hereof with the United States of America or such  
14 federal or public agency or department of the United States  
15 or with any private agency, corporation or individual.

**§18-11E-9. Vested rights; impairment.**

1 The state pledges and agrees with the holders of any  
2 bonds or notes issued under this article that the state will  
3 not limit or alter the rights vested in the board to fulfill  
4 the terms of any agreements made with the holders thereof,  
5 or in any way impair the rights and remedies of the holders,  
6 until the bonds or notes, together with the interest thereon,  
7 and all costs and expenses in connection with any action or  
8 proceeding by or on behalf of such holders, are fully met and  
9 discharged. The board is authorized to include its pledge  
10 and agreement of the state in any agreement with the holders  
11 of such bonds or notes.



**§18-11E-10. Bonds and notes not debt of state, county, municipality or any political subdivision; expenses incurred pursuant to article.**

1 Bonds, refunding bonds and notes issued under the au-  
2 thority of this article and any coupons in connection there-  
3 with shall not constitute a debt or a pledge of the faith  
4 and credit or taxing power of the state or of any county,  
5 municipality or any other political subdivision of the state,  
6 and the holders and owners thereof shall have no right to  
7 have taxes levied by the Legislature or the taxing authority  
8 of any county, municipality or any other political subdivision  
9 of the state for the payment of the principal thereof or  
10 interest thereon, but such bonds and notes shall be payable  
11 solely from the revenues and funds pledged for their pay-  
12 ment as authorized by this article: *Provided*, That notes issued  
13 in anticipation of the issuance of bonds or bonds being re-  
14 funded may be paid from the proceeds of bonds which are  
15 payable solely from revenues and funds pledged for their  
16 payment as authorized by this article. All such bonds and  
17 notes shall contain on the face thereof a statement to the  
18 effect that the bonds or notes, as to both principal and  
19 interest, are not debts of the state or any county, municipality  
20 or political subdivision thereof, but are payable solely from  
21 revenues and funds pledged for their payment.

22 All expenses incurred in carrying out the provisions of  
23 this article shall be payable solely from funds provided under  
24 the authority of this article. This article does not authorize  
25 the board to incur indebtedness or liability on behalf of or  
26 payable by the state or any county, municipality or any other  
27 political subdivision.

**§18-11E-11. Negotiability of bonds and notes.**

1 Other provisions of this code to the contrary notwith-  
2 standing, the bonds or notes authorized to be issued by this  
3 article are negotiable instruments within the meaning of and  
4 for all the purposes of the uniform commercial code, subject  
5 only to the provisions of the bonds or notes for registration.

**§18-11E-12. Bonds and notes legal investments.**

1 The provisions of sections nine and ten, article six, chapter

2 twelve of this code to the contrary notwithstanding, the  
3 bonds and notes of the state issued by the board are securities  
4 in which all public officers and bodies of the state, including  
5 the West Virginia state board of investments, all municipalities  
6 and other political subdivisions of the state, all insurance  
7 companies and associations and other persons carrying on  
8 an insurance business, including domestic for life and do-  
9 mestic not for life insurance companies, all banks, trust com-  
10 panies, societies for savings, building and loan associations,  
11 savings and loan associations, deposit guarantee associations  
12 and investment companies, all administrators, guardians, exe-  
13 cutors, trustees and other fiduciaries and all other persons  
14 whatsoever who are authorized to invest in bonds or other  
15 obligations of the state may properly and legally invest funds,  
16 including capital, in their control or belonging to them.

**§18-11E-13. Exemption from taxation.**

1 The exercise of the powers granted to the board by this  
2 article will be in all respects for the benefit of the students  
3 and the faculty and other employees at Marshall University  
4 and the other people of the state, for the improvement of  
5 their safety, convenience and welfare, and is a public pur-  
6 pose. As the operation and maintenance of the football  
7 stadium or other athletic facilities at Marshall University  
8 constitute the performance of essential governmental func-  
9 tions, the board shall not be required to pay any taxes or  
10 assessments upon any property acquired or used by the board  
11 or upon the income therefrom. All bonds and notes of the  
12 state issued by the board, and all interest and income thereon,  
13 shall be exempt from all taxation by the state and any county,  
14 municipality, political subdivision or agency thereof, except  
15 inheritance taxes.

**§18-11E-14. Article regarded as supplementary.**

1 This article shall be deemed to provide an additional and  
2 alternative method for the doing of the things authorized  
3 hereby and shall be regarded as supplementary and additional  
4 to powers conferred by other laws.

**§18-11E-15. Liberal construction.**

1 This article, being necessary for the safety, convenience

2 and welfare of the students and the faculty and other em-  
3 ployees at Marshall University and the other people of the  
4 state, shall be liberally construed to effectuate the purposes  
5 hereof.

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## CHAPTER 67

(Com. Sub. for S. B. 612—By Senator Burdette, et al.)

[Passed March 9, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-two, all relating to higher education full-time faculty salaries; establishing minimum salary goals for full-time faculty of institutions of higher education; defining terms; assignment to salary schedule; providing for a seven and one-half percent increase of certain salaries; establishing a minimum salary for each academic rank; requiring remaining funds appropriated be utilized for appropriate placement on the salary schedule; prohibiting reduction of salary; providing that salaries for full-time faculty after the effective date of this article comply therewith; permitting merit increases and salary adjustments in certain circumstances; and providing for additional employment.

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

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

### **ARTICLE 22. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.**

- §18-22-1. Definitions.
- §18-22-2. Higher education minimum salary schedule.
- §18-22-3. Assignment to salary schedule; actual salary.
- §18-22-4. Hirings after effective date.
- §18-22-5. Merit increases and salary adjustments.
- §18-22-6. Additional employment by mutual agreement.

**§18-22-1. Definitions.**

1 As used in this article:

2 (a) "Schedule" or "salary schedule" means the grid of  
3 minimum salary figures listed in section two of this article;

4 (b) "Academic rank" means the position held by a  
5 faculty member as determined by the president, consistent  
6 with policy established by the board of regents, and  
7 includes the positions of professor, associate professor,  
8 assistant professor and instructor; all other ranks are  
9 excluded from the provisions of this article;

10 (c) "Years of experience" means the actual number of  
11 years a person has been a full-time faculty member at an  
12 institution of higher education within this state.  
13 Employment for nine months shall equal one year of  
14 experience, but no faculty member may accrue more than  
15 one year of experience during any given academic year.  
16 Employment for less than full-time, or less than nine  
17 months during any fiscal year, shall be prorated. In  
18 accordance with rules and regulations established by the  
19 board of regents, a faculty member may be granted  
20 additional years of experience for actual years of work or  
21 teaching experience at institutions other than institutions  
22 of higher education within this state;

23 (d) "Doctoral institutions" means West Virginia  
24 University; "master's institutions" means Marshall  
25 University, West Virginia School of Osteopathic Medicine  
26 and the West Virginia College of Graduate Studies;  
27 "baccalaureate and two-year institutions" means Bluefield  
28 State College, Concord College, Fairmont State College,  
29 Glenville State College, Shepherd College, West Liberty  
30 State College, West Virginia Institute of Technology, West  
31 Virginia State College, Parkersburg Community College,  
32 Southern West Virginia Community College, West Virginia  
33 Northern Community College and Potomac State College  
34 of West Virginia University;

35 (e) "Salary" means the total nine-month or ten-month  
36 salary paid from state funds to a full-time faculty member,  
37 or if other than nine or ten months, adjusted to a nine-  
38 month base salary;

39 (f) "Full-time faculty" means any faculty member  
 40 designated as such by the president, consistent with  
 41 approved policy of the board of regents, and those persons  
 42 with faculty rank who have research or administrative  
 43 responsibilities;

44 (g) "Fiscal year" means twelve calendar months and  
 45 begins on the first day of July and ends on the thirtieth day  
 46 of June; and

47 (h) "Merit increases and salary adjustments" means the  
 48 amount of additional salary increase allowed on a merit  
 49 basis or to rectify salary inequities or accommodate  
 50 competitive market conditions, in accordance with policy  
 51 established by the board of regents.

**§18-22-2. Higher education minimum salary schedule.**

1 There is hereby established a state minimum salary  
 2 schedule for full-time faculty employed by the board of  
 3 regents consisting of a minimum salary for each academic  
 4 rank in accordance with years of experience: *Provided*,  
 5 That it is the intention of the Legislature to create a  
 6 schedule of minimum salary goals in higher education  
 7 subject to the availability of funds; and with the exception  
 8 of the placement of all full-time faculty members included  
 9 under the provisions of this article on the schedule at zero  
 10 years of experience, nothing in this article shall be  
 11 construed to guarantee payment to any faculty member of  
 12 the salary indicated on the appropriate schedule at his  
 13 actual years of experience.

14 **MINIMUM SALARY SCHEDULE**  
 15 **FOR FULL-TIME FACULTY AT**  
 16 **BACCALAUREATE AND TWO-YEAR INSTITUTIONS**

17	Years of		Assistant	Associate	
18	Experience	Instructor	Professor	Professor	Professor
19	0	14,018	17,183	19,444	23,152
20	1	14,369	17,613	19,931	23,731
21	2	14,729	18,054	20,430	24,325
22	3	15,098	18,506	20,941	24,934
23	4	15,476	18,969	21,465	25,518
24	5	15,863	19,444	22,002	26,117
25	6	16,260	19,931	22,553	26,852

26	7	16,667	20,430	23,117	27,524
27	8	17,084	20,941	23,695	28,213
28	9	17,512	21,465	24,288	28,919
29	10	17,950	22,002	24,896	29,642
30	11	18,399	22,553	25,519	30,384
31	12	18,859	23,117	26,157	31,144
32	13	19,331	23,695	26,811	31,923
33	14	19,815	24,288	27,482	32,722
34	15	20,311	24,896	28,170	33,541

35 **MINIMUM SALARY SCHEDULE FOR FULL-TIME**  
 36 **FACULTY AT MASTER'S INSTITUTIONS**  
 37 **(MARSHALL UNIVERSITY, WEST VIRGINIA**  
 38 **SCHOOL OF OSTEOPATHIC MEDICINE AND THE**  
 39 **WEST VIRGINIA COLLEGE OF GRADUATE STUDIES)**

40	Years of		Assistant	Associate	
41	Experience	Instructor	Professor	Professor	Professor
42	0	14,018	17,635	22,681	24,955
43	1	14,369	18,076	23,249	25,579
44	2	14,729	18,528	23,831	26,219
45	3	15,098	18,992	24,427	26,875
46	4	15,476	19,467	25,038	27,547
47	5	15,863	19,954	25,664	28,236
48	6	16,260	20,453	26,306	28,942
49	7	16,667	20,965	26,964	29,666
50	8	17,084	21,490	27,639	30,408
51	9	17,512	22,028	28,330	31,169
52	10	17,950	22,579	29,039	31,949
53	11	18,399	23,144	29,765	32,748
54	12	18,859	23,723	30,590	33,567
55	13	19,331	24,317	31,273	34,407
56	14	19,815	24,928	32,055	35,268
57	15	20,311	25,549	32,857	36,150

58 **MINIMUM SALARY SCHEDULE FOR FULL-TIME**  
 59 **FACULTY AT DOCTORAL INSTITUTIONS**  
 60 **(WEST VIRGINIA UNIVERSITY)**

61	Years of		Assistant	Associate	
62	Experience	Instructor	Professor	Professor	Professor
63	0	16,278	18,539	24,246	26,938
64	1	16,685	19,003	24,853	27,611
65	2	17,103	19,479	25,475	28,301

66	3	17,531	19,966	26,112	29,009
67	4	17,970	20,466	26,765	29,734
68	5	18,420	20,978	27,435	30,477
69	6	18,881	21,503	28,121	31,239
70	7	19,354	22,041	28,825	32,020
71	8	19,838	22,593	29,546	32,821
72	9	20,334	23,158	30,285	33,642
73	10	20,843	23,737	31,043	34,483
74	11	21,365	24,331	31,820	35,345
75	12	21,900	24,940	32,616	36,229
76	13	22,448	25,564	33,432	37,135
77	14	23,010	26,204	34,268	38,063
78	15	23,586	26,860	35,125	39,015

79 For those faculty members whose years of experience  
 80 exceed those delineated on the schedule, the appropriate  
 81 salary may be determined by adding two and one-half  
 82 percent for each additional year of experience.

**§18-22-3. Assignment to salary schedule; actual salary.**

1 (a) Upon the effective date of this article, each faculty  
 2 member then employed shall be given notice of the  
 3 placement on the minimum salary schedule which is  
 4 appropriate to such faculty member's years of experience  
 5 and to which such individual has been assigned, or notice of  
 6 the appropriate salary if such member has greater than  
 7 fifteen years of experience, notwithstanding the actual  
 8 salary paid under the provisions of this article.

9 (b) Each full-time faculty member employed as of the  
 10 effective date of this article shall receive, for full-time  
 11 employment at the same academic rank during the  
 12 academic year one thousand nine hundred eighty-four—  
 13 eighty-five and thereafter, a salary which is at least seven  
 14 and one-half percent greater than the salary being paid  
 15 such faculty member for the academic year one thousand  
 16 nine hundred eighty-three—eighty-four.

17 (c) Each full-time faculty member whose salary under  
 18 subsection (b) is less than the salary for zero years of  
 19 experience for the appropriate academic rank as set forth in  
 20 section two of this article, shall receive additional amounts

21 so that salary is at least the amount prescribed for the  
22 appropriate academic rank at zero years of experience.

23 (d) Funds remaining after increasing the salary of each  
24 full-time faculty member in accordance with subsection (c)  
25 of this section shall be used to pay that amount that is the  
26 difference between the salary as prescribed in subsection  
27 (b) of this section and the appropriate salary for each full-  
28 time faculty member's appropriate placement on the  
29 schedule: *Provided*, That such amount may be reduced  
30 proportionately based upon the amount of funds available  
31 for such purpose.

32 (e) The salary of any full-time faculty member shall not  
33 be reduced by the provisions of this article.

34 (f) Upon promotion in rank, placement on the minimum  
35 salary schedule will be such as to provide a salary increase  
36 of at least ten percent, and shall be at least the amount  
37 prescribed for the appropriate academic rank to which  
38 promoted at zero years of experience.

**§18-22-4. Hirings after the first day of July, one thousand nine hundred eighty-four.**

1 Any person hired as a full-time faculty member after the  
2 effective date of this article shall be assigned a placement  
3 on the minimum salary schedule which is appropriate to  
4 such person's academic rank and years of experience, and  
5 such person shall have a minimum salary paid in  
6 accordance with the provisions of this article.

**§18-22-5. Merit increases and salary adjustments.**

1 Nothing in this article shall be construed to prohibit  
2 merit increases or salary adjustments that rectify inequities  
3 or accommodate competitive market conditions in specific  
4 areas of specialty, in accordance with policy established by  
5 the board of regents, if funds are available for such  
6 increases: *Provided*, That all increases as set forth in section  
7 two of this article shall be granted prior to the consideration  
8 of any increases based on merit.



**§18-22-6. Additional employment by mutual agreement.**

1 Any employment for greater than a nine-month period, or  
2 any responsibilities in excess of full-time duties, shall be  
3 only by mutual agreement of the employee and the college  
4 president, or his designated representative in accordance  
5 with policy established by the West Virginia board of  
6 regents. The terms and conditions of any such agreement  
7 shall be in writing, signed by both parties, and shall state  
8 the maximum number of additional employment days or  
9 credit hours or their equivalent to be worked and the  
10 amount of compensation to be paid.

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## CHAPTER 68

(Com. Sub. for S. B. 260—By Senator Holmes, et al.)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twenty-four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fees and other money collected at state institutions of higher education; disposition of funds received from fees and contracts from athletic events, bowl games and post season tournaments; authority to transfer funds to academic programs.

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

That section seven, article twenty-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 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.**

**§18-24-7. Fees and money derived from athletic contests.**

1 The directors of athletics at state institutions of higher  
2 education may fix and charge admission fees to athletic  
3 contests at state institutions of higher education and may

4 enter into contracts and spend and receive money under  
5 such contracts for the student athletic teams of state in-  
6 stitutions of higher education to contest with other ath-  
7 letic teams inside or outside the state. All money received  
8 from such fees and contracts shall be deposited into the  
9 athletic accounts of the state institutions of higher educa-  
10 tion.

11 All money derived from such fees and under such con-  
12 tracts shall be used to defray the cost of maintaining the  
13 athletic department and athletic program of such institu-  
14 tions. The operation of training camps and training tables  
15 and providing room accommodations for participants in  
16 the athletic program of such institutions shall be recog-  
17 nized and considered as a proper part of such mainten-  
18 ance, but the specific mention of training camps and  
19 training tables and providing room accommodations shall  
20 not be construed or understood to limit in any way the  
21 general power and authority otherwise granted and con-  
22 ferred by this section: *Provided*, That (1) one percent of  
23 the total gross receipts deposited into the athletic ac-  
24 counts, and (2) not less than twenty-five percent of the  
25 net receipts from televised athletic events, bowl games  
26 and postseason tournaments deposited into the athletic  
27 accounts shall be transferred into a separate and distinct  
28 special revenue account for each individual state institu-  
29 tion of higher education, which special revenue account  
30 shall be designated "athletic facilities construction, re-  
31 pair or replacement reserve account," in the state trea-  
32 sury. Such revenues shall be used only for construction,  
33 repair or replacement of athletic facilities at the same  
34 individual state institution of higher education to which  
35 such special revenue account is credited. Notwithstanding  
36 any other provision in this section to the contrary, in  
37 the year in which they are received, no more than twenty-  
38 five percent of the net receipts from televised athletic  
39 events, bowl games and postseason tournaments deposit-  
40 ed into athletic accounts may be transferred into other  
41 accounts of the same state institution of higher education  
42 having such receipts for the support of academic pro-  
43 grams to meet an occasional rather than recurrent need or

44 expense, and in accord with legislative rules promulgated  
45 by the board of regents pursuant to chapter twenty-nine-a  
46 of this code, notwithstanding any other provision of this  
47 code to the contrary.

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## CHAPTER 69

(S. B. 699—By Senator Parker)

[Passed March 8, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-eight, relating to the board of regents selling certain vacant property located outside the campus of West Virginia University in Morgantown; and providing for the use of the receipts therefrom.

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

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

**ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.**

**§18-26-28. Authorization to sell West Virginia University poultry farm properties located in Morgantown.**

1 (a) The board of regents is hereby authorized and  
2 empowered to sell those parcels of land situate on the  
3 Van Voorhis Road in Monongalia County, West Virginia,  
4 bounded and described as follows:

5 Beginning at a post standing south of the center line  
6 of the said Van Voorhis Road, in the line of property now  
7 or formerly of Vandervort, 170.0 feet, thence from said  
8 post, S. 75 degrees 34' E. 1190.6 feet to a white oak stump,  
9 corner to land now or formerly of Gorman, Goodwin,  
10 Baker and Hawkins; thence with a line of the said corner  
11 to land of J. D. Harless, and with his said line, N. 58

12 degrees 18' W. 279.7 feet to a point in the center line of  
13 said Van Voorhis Road; thence with the center line of  
14 said road, S. 56 degrees 25' W. 964.1 feet to a point in the  
15 center of said road; thence S. 10 degrees 34' E. 170.0 feet  
16 to the place of beginning, containing 15.71 acres, as sur-  
17 veyed and platted by B. W. Reynolds, Surveyor, October  
18 28, 1946.

19 And, beginning at a stake in a line of Charles Baker  
20 and 27.96 feet from the corner of Charles Baker and D.  
21 L. Hartman; thence N. 26 degrees 26' E. 150 feet to a  
22 stake; thence S. 63 degrees 34' E. 70 feet to a stake; thence  
23 S. 26 degrees 26' thence N. 36 degrees 58' W. 7.29 feet  
24 to the place of beginning, containing .28 acres, more or  
25 less. And, beginning at a stake in a line of Charles Baker  
26 and on a corner of land of Virginia May Burruss and A.  
27 J. W. Headlee; thence N. 26 degrees 26' E. 160 feet to a  
28 stake; thence S. 63 degrees 34' E. 70 feet to a stake; thence  
29 S. 26 degrees 26' W. 160 feet to a stake on a corner of land  
30 of Virginia May Burruss and A. J. W. Headlee; thence N.  
31 63 degrees 34' W. 75 feet to the place of beginning, con-  
32 taining .257 acres, more or less.

33 And, beginning at a stone corner of the lands of W. W.  
34 McClure and L. O. Starkey, and running Southwest a  
35 distance of 660 feet (40 poles) to a point or corner of lands  
36 of L. O. Starkey and Emma Hill; thence westward a  
37 distance of 587.4 feet (35.35 poles) to a white oak tree,  
38 corner to lands of the said Emma Hill and Charles M.  
39 Baker; thence northwest a distance of 610.5 (37 poles) to  
40 a walnut tree, corner to lands of Charles M. Baker and  
41 Martin L. Goodwin; thence in an easterly direction a  
42 distance of 990 feet (60 poles) to the cornerstone herein-  
43 before mentioned as the place of beginning, containing  
44 12 3/4 acres, more or less.

45 And, beginning at a point in the line of property for-  
46 merly belonging to James Gorman, being the property  
47 formerly occupied by S. S. Ivill, which said beginning  
48 point is N. 9½ degrees W. 739 feet from the center of  
49 Chestnut Ridge Road; thence with the line of property  
50 formerly belonging to Coleman Vandervort and now be-

51 longing to Headlee, and thence with a line of Headlee, S.  
52 80 degrees E. 535 feet, more or less, to the corner of Baker;  
53 and thence with Baker two lines in a Southerly direction  
54 with the line of Baker, 645 feet to a point and 576 feet to a  
55 point in the line of Baker, which said last mentioned  
56 point is 754 feet in a northerly direction from the center  
57 of said Chestnut Ridge Road; and thence with an arbi-  
58 trary line through the property formerly belonging to  
59 Adam W. Thompson in a Westerly direction 570 feet to  
60 the place of beginning, containing 16 acres, more or less;  
61 and being the same real estate conveyed to the gran-  
62 tor, Lee Moore, by deed from Benjamin G. Reeder and  
63 Marie F. Reeder, his wife, dated February 28, 1956, and  
64 recorded in the office of the clerk of the County of Mon-  
65 ongalia, West Virginia, at a public auction: *Provided*, That  
66 prior to such action the board of regents shall have the  
67 property appraised by two licensed appraisers and shall  
68 not sell the property for less than the average of the two  
69 appraisals.

70 (b) The proceeds from the sale of the property re-  
71 ferred to shall be deposited in a special revenue account  
72 from which the board of regents is hereby authorized to  
73 expend funds to relocate the West Virginia University  
74 poultry facility with such surplus as may be left being  
75 used for improvements to the college of agriculture and  
76 forestry facilities or deposited in a special medical school  
77 fund heretofore created in the state treasury under the  
78 provisions of section two, article nineteen, chapter eleven  
79 of this code, for educationally related projects.

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## CHAPTER 70

(Com. Sub. for H. B. 1477--By Delegate Spencer)

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[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and six, article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend

said article by adding thereto a new section, designated section two-a, relating to the continuing contract of teachers and school service personnel; providing that teachers and service personnel with continuing contracts be granted such status after one year acceptable employment with another county in certain instances; relating to rights of teachers returning from certain approved leaves of absence; and requiring restoration to former assignment and retention of seniority rights and other privileges upon such return.

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

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

**ARTICLE 2. SCHOOL PERSONNEL.**

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.

§18A-2-2a. Leaves of absence for teachers.

§18A-2-6. Continuing contract status for service personnel; termination.

**§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.**

1 Before entering upon their duties, all teachers shall execute  
 2 a contract with their boards of education, which contract shall  
 3 state the salary to be paid and shall be in the form prescribed  
 4 by the state superintendent of schools. Every such contract  
 5 shall be signed by the teacher and by the president and  
 6 secretary of the board of education, and when so signed shall  
 7 be filed, together with the certificate of the teacher, by the  
 8 secretary of the office of the board.

9 A teachers' contract, under this section, shall be for a term  
 10 of not less than one nor more than three years; and if, after  
 11 three years of such employment, the teacher who holds a  
 12 professional certificate, based on at least a bachelor's degree,  
 13 has met the qualifications for the same, and the board of edu-

14 cation enter into a new contract of employment, it shall be  
15 a continuing contract: *Provided*, That any teacher holding  
16 a valid certificate with less than a bachelor's degree who is  
17 employed in a county beyond the said three-year probationary  
18 period shall upon qualifying for said professional certificate  
19 based upon a bachelor's degree, if reemployed, be granted  
20 continuing contract status: *Provided, however*, That a teacher  
21 holding continuing contract status with one county shall be  
22 granted continuing contract status with any other county upon  
23 completion of one year of acceptable employment if such  
24 employment is during the next succeeding school year or  
25 immediately following an approved leave of absence extend-  
26 ing no more than one year.

27 The continuing contract of any teacher shall remain in full  
28 force and effect except as modified by mutual consent of the  
29 school board and the teacher, unless and until terminated  
30 (1) by a majority vote of the full membership of the board  
31 before April first of the then current year, after written notice,  
32 served upon the teacher, return receipt requested, stating  
33 cause or causes, and an opportunity to be heard at a meeting  
34 of the board prior to the board's action thereon, or (2) by  
35 written resignation of the teacher before that date. Such  
36 termination shall take effect at the close of the school year  
37 in which the contract is so terminated: *Provided*, That  
38 the contract may be terminated at any time by mutual con-  
39 sent of the school board and the teacher, and that this section  
40 shall not affect the powers of the school board to suspend  
41 or dismiss a principal or teacher pursuant to section eight  
42 of this article: *Provided, however*, That a continuing con-  
43 tract for any teacher holding a certificate valid for more than  
44 one year and in full force and effect during the school year  
45 one thousand nine hundred eighty-four and one thousand  
46 nine hundred eighty-five shall remain in full force and effect:  
47 *Provided further*, That a continuing contract shall not operate  
48 to prevent a teacher's dismissal based upon the lack of need for  
49 the teacher's services pursuant to the provisions of law relating  
50 to the allocation to teachers and pupil-teacher ratios. But  
51 in case of such dismissal, the teachers so dismissed shall be  
52 placed upon a preferred list in the order of their length of  
53 service with that board, and no teacher shall be employed by

54 the board until each qualified teacher upon the preferred list,  
55 in order, shall have been offered the opportunity for reem-  
56 ployment: *And provided further*, That he has not accepted a  
57 teaching position elsewhere. Such reemployment shall be upon  
58 a teacher's preexisting continuing contract and shall have  
59 the same effect as though the contract had been suspended  
60 during the time the teacher was not employed.

61 In the assignment of position or duties of a teacher under  
62 said continuing contract, the board shall have authority to  
63 provide for released time of a teacher for any special profes-  
64 sional or governmental assignment without jeopardizing the  
65 contractual rights of such teacher or any other rights, privi-  
66 leges or benefits under the provisions of this chapter.

67 Any teacher who fails to fulfill his contract with the board,  
68 unless prevented from so doing by personal illness or other  
69 just cause, or unless released from such contract by the board,  
70 or who violates any lawful provision thereof, shall be dis-  
71 qualified to teach in any other public school in the state for  
72 a period of the next ensuing school year, and the state de-  
73 partment of education or board may hold all papers and  
74 credentials of such teacher on file for a period of one year  
75 for such violation: *Provided*, That marriage of a teacher  
76 shall not be considered a failure to fulfill, or a violation of,  
77 the contract.

**§18A-2-2a. Leaves of absence for teachers.**

1 Any teacher who is returning from an approved leave of  
2 absence that extended for a period of less than one year shall  
3 be reemployed by the board with the right to be restored to the  
4 same assignment of position or duties held prior to the ap-  
5 proved leave of absence. Such teacher shall retain all seniority,  
6 rights and privileges which had accrued at the time of the  
7 approved leave of absence, and shall have all rights and privi-  
8 leges generally accorded teachers at the time of the reem-  
9 ployment.

**§18A-2-6. Continuing contract status for service personnel; termi-  
nation.**

1 After three years of acceptable employment, each service



2 personnel employee who enters into a new contract of em-  
3 ployment with the board shall be granted continuing contract  
4 status: *Provided*, That a service personnel employee holding  
5 continuing contract status with one county shall be granted  
6 continuing contract status with any other county upon com-  
7 pletion of one year of acceptable employment if such em-  
8 ployment is during the next succeeding school year or im-  
9 mediately following an approved leave of absence extending  
10 no more than one year. The continuing contract of any such  
11 employee shall remain in full force and effect except as  
12 modified by mutual consent of the school board and the em-  
13 ployee, unless and until terminated with written notice, stating  
14 cause or causes, to the employee, by a majority vote of the  
15 full membership of the board before the first day of April of  
16 the then current year, or by written resignation of the em-  
17 ployee before that date. The affected employee shall have  
18 the right of a hearing before the board, if requested, before  
19 final action is taken by the board upon the termination of  
20 such employment.

21 Those employees who have completed three years of ac-  
22 ceptable employment as of the effective date of this legislation  
23 shall be granted continuing contract status.

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## CHAPTER 71

(Com. Sub. for H. B. 1540—By Delegate Murphy and Delegate Mullett)

[Passed March 7, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salary classifications for teachers; and allowing fifteen undergraduate credits earned after the effective date of this section at institutions of higher education to be used for advanced salary classification in certain circumstances.

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

That section one, article four, chapter eighteen-a of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.**

**§18A-4-1. Definitions.**

1 For the purpose of this section, salaries shall be defined  
2 as: (a) "Basic salaries" which shall mean the salaries paid  
3 to teachers with zero years of experience and in accordance  
4 with the classification of certification and of training of said  
5 teachers; and (b) "advanced salaries" which shall mean the  
6 basic salary plus an experience increment based on the allow-  
7 able years of experience of the respective teachers in ac-  
8 cordance with the schedule established herein for the applicable  
9 classification of certification and of training of said teachers.

10 "Classification of certification" means the class or type of  
11 certificate issued by the state superintendent of schools under  
12 the statutory provisions of this chapter. "Classification of  
13 training" means the number of collegiate or graduate hours  
14 necessary to meet the requirements stipulated in the defini-  
15 tions set forth in the next paragraph in items (2) to (10)  
16 inclusive.

17 The column heads of the state minimum salary schedule  
18 set forth in section two of this article are defined as follows:

19 (1) "Years of experience" means the number of years the  
20 teacher has been employed in the teaching profession, in-  
21 cluding active work in educational positions other than  
22 the public schools, and service in the armed forces of the  
23 United States if the teacher were under contract to teach at  
24 the time of his induction. For a registered professional  
25 nurse employed by a county board of education, "years of  
26 experience" means the number of years the nurse has been  
27 employed as a public school health nurse, including active  
28 work in a nursing position related to education, and service  
29 in the armed forces if the nurse was under contract with the  
30 county board at the time of induction. For the purpose of  
31 section two of this article, the experience of a teacher or  
32 a nurse shall be limited to that allowed under his training  
33 classification as found in the minimum salary schedule.

34 (2) "Fourth class" means all certificates previously identi-  
35 fied as (a) "certificates secured by examination," (b) "other  
36 first grade certificates."

37 (3) "Third class" means all certificates previously identi-  
38 fied as (a) "standard normal certificates" and (b) "third  
39 class temporary (sixty-four semester hours) certificates."

40 (4) "Second class" means all certificates previously identi-  
41 fied as "second class temporary certificates based upon the re-  
42 quired ninety-six hours of college work."

43 (5) "A.B." means a bachelor's degree, from an accredited  
44 institution of higher education, which has been issued to,  
45 or for which the requirements for such have been met by,  
46 a person who qualifies for or holds a professional certificate  
47 or its equivalent. A registered professional nurse with a  
48 bachelor's degree, who is licensed by the West Virginia  
49 board of examiners for registered professional nurses and  
50 employed by a county board of education, shall be within  
51 this classification for payment in accordance with sections  
52 two and two-a of this article.

53 (6) "A.B. plus 15" means a bachelor's degree as defined  
54 above plus fifteen hours of graduate work, from an accredited  
55 institution of higher education certified to do graduate work,  
56 in an approved planned program at the graduate level which  
57 requirements have been met by a person who qualifies for or  
58 holds a professional certificate or its equivalent.

59 (7) "M. A." means a master's degree, earned in an in-  
60 stitution of higher education approved to do graduate work,  
61 which has been issued to, or the requirements for such  
62 have been met by, a person who qualifies for or holds a  
63 professional certificate or its equivalent.

64 (8) "M. A. plus 15" means the above-defined master's  
65 degree plus fifteen hours of graduate work, earned in an  
66 institution of higher education approved to do graduate  
67 work, if the person is qualified for or holds a professional  
68 certificate or its equivalent.

69 (9) "M. A. plus 30" means the above-defined master's  
70 degree plus thirty graduate hours, earned in an institution

71 approved to do graduate work, if the person is qualified for  
72 or holds a professional certificate or its equivalent.

73 (10) "Doctorate" means a doctor's degree, earned from a  
74 university qualified and approved to confer such a degree,  
75 which has been issued to or the requirements for such have  
76 been met by a person who qualifies for or holds a professional  
77 certificate or its equivalent.

78 Notwithstanding the requirements set forth in subdivisions  
79 (6), (8) and (9) of this section relating to hours of graduate  
80 work at an institution certified to do such work, fifteen  
81 undergraduate credit hours from a regionally accredited  
82 institution of higher education, earned after the effective date  
83 of this section, may be utilized for advanced salary classifica-  
84 tion if such hours are in accordance with (a) the teacher's  
85 current classification of certification and of training, (b) a  
86 designated instructional shortage area documented by the  
87 employing county superintendent, or (c) an identified teaching  
88 deficiency documented through the state approved county  
89 personnel evaluation system.

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## CHAPTER 72

(Com. Sub. for H. B. 1027—By Delegate McKinley)

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[Passed February 29, 1984; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section thirty-seven, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to restrictions on presence and conduct at polls; additional time to vote for disabled persons.

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

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

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.****§3-1-37. Restrictions on presence and conduct at polls.**

1 No person, except the election officers and voters while  
2 going to the election room to vote and returning therefrom,  
3 shall be or remain within sixty feet of such room while the  
4 polls are open; but this section shall not apply to persons  
5 living or carrying on business within that distance of the  
6 election room, while in the discharge of their legitimate  
7 business, or to persons whose business requires them to pass  
8 and re-pass within sixty feet of such room.

9 Not more than one voter for each compartment or booth at  
10 the precinct shall be allowed in the election room at one  
11 time, and no person shall approach nearer than five feet to  
12 any booth or compartment while the election is being held,  
13 except the voters to prepare their ballots, or the poll clerks  
14 when called on by a voter to assist in the preparation of  
15 his ballot, and no person, other than election officers and  
16 voters engaged in receiving, preparing, and depositing their  
17 ballots, shall be permitted to be within five feet of any  
18 ballot box, except by authority of the board of election  
19 commissioners, and then only for the purpose of keeping  
20 order and enforcing the law.

21 Not more than one person shall be permitted to occupy  
22 any booth or compartment at one time. No person shall  
23 remain in or occupy a booth or compartment longer than may  
24 be necessary to prepare his ballot, and in no event longer  
25 than five minutes, except that any person who claims a dis-  
26 ability pursuant to section thirty-four of this article shall  
27 have additional time up to ten additional minutes to prepare  
28 his ballot. No voter, or person offering to vote, shall hold any  
29 conversation or communication with any person other than the  
30 poll clerks or commissioners of election, while in the election  
31 room.

32 The provisions of this section shall not apply to persons  
33 rendering assistance to blind voters as provided in section  
34 thirty-four of this article.

## CHAPTER 73

(H. B. 1122—By Delegate Casey and Delegate Hatcher)

[Passed January 27, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the election of delegates to national conventions of political parties in accordance with a plan adopted by the party and filed with the secretary of state; certain provisions required in plan if permissible under rules of the national party; ballot notation; and providing for the election of delegates to the national convention of a political party when the party has not filed a plan for the election of such delegates with the secretary of state.

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

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

### ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

#### §3-5-2. Delegates to national conventions; alternate delegates.

1 (a) At the primary election to be held in the year one  
 2 thousand nine hundred eighty-four, and in every fourth year  
 3 thereafter, there shall be elected by the voters of each  
 4 political party of the state, in accordance with a plan  
 5 adopted by the state party, persons to be delegates to the  
 6 national convention of the party to be held next after the  
 7 date of such primary.

8 (b) The plan adopted by each political party of the state  
 9 shall state the method, subject to compliance with their  
 10 national party rules and not inconsistent with the provisions  
 11 of this section, for the election of persons in each con-  
 12 gressional district of the state as delegates to the national  
 13 convention of the party, for the election or selection of  
 14 persons in each congressional district of the state as alternate  
 15 delegates to the national convention of the party and for

16 the selection of all remaining delegates and alternate delegates  
17 allocated to the party in their national convention. Not less  
18 than ninety days before the primary election to be held in  
19 the year one thousand nine hundred eighty-four, and in every  
20 fourth year thereafter, the governing body of each political  
21 party of the state shall certify the plan adopted by the party  
22 under signature of the state party chairman and file the plan  
23 with the secretary of state. Any questions regarding whether  
24 such plan was rightfully adopted by the party shall be resolved  
25 by the party based upon party rules.

26 (c) The plan adopted by each political party of the state  
27 shall, to the extent permissible under their national party  
28 rules, provide for the following:

29 (1) The voters of each political party shall elect in each  
30 congressional district in the state at the primary election  
31 next preceding the date on which the national convention of the  
32 party is to be held, the number of persons as delegates to the  
33 national convention of the party to which the district is en-  
34 titled as delegates to the national convention. The persons  
35 receiving the highest number of votes as delegates in any con-  
36 gressional district, to the number to which the district is en-  
37 titled, shall be elected delegates.

38 (2) After the election of delegates in each congressional  
39 district to the number to which the district is entitled, the per-  
40 sons receiving the next highest votes in each congressional  
41 district and having qualified, as may be provided in the  
42 plan adopted by the party, shall be elected as alternate dele-  
43 gates to the number of alternate delegates to which the dis-  
44 trict is entitled.

45 (3) In the event the number of persons elected in the  
46 primary election in a congressional district is less than the  
47 number to which the district is entitled as delegates and  
48 alternate delegates to the national convention of the political  
49 party, the governing body of the political party of the state  
50 shall appoint persons from the congressional district to serve  
51 as delegates or alternate delegates to the national convention  
52 of the party unless the rules of the party otherwise provide.

53 (4) The number of persons which each of the con-

54 gressional districts in the state are entitled to elect as dele-  
55 gates to the national convention of the political party shall  
56 be apportioned among the congressional districts in the same  
57 proportion to the total number of delegates to the party's  
58 national convention elected in all congressional districts in  
59 the state as the population of the congressional district bears  
60 to the total population of the state based upon the census of  
61 population taken by the bureau of the census of the United  
62 States department of commerce in the year one thousand  
63 nine hundred eighty and in every tenth year thereafter.

64 (d) The official primary ballot at the primary election to be  
65 held in the year one thousand nine hundred eighty-four and in  
66 every fourth year thereafter, shall, following the names of all  
67 candidates for delegates to the national convention of the  
68 party, contain the words "For election in accordance with the  
69 plan adopted by the party and filed with the secretary of  
70 state."

71 (e) Unless and until a political party of the state has  
72 adopted and certified a plan for the election of delegates  
73 to the national convention of the party and filed the plan  
74 with the secretary of state, there shall be elected by the voters  
75 of the political party of the state at the primary election to  
76 be held in the year one thousand nine hundred eighty-four,  
77 and in each fourth year thereafter, the number of persons  
78 to which the party is entitled as delegates-at-large, and by  
79 the voters of each political party in each congressional district  
80 in the state the number of delegates to which the district is  
81 entitled, in the national convention of the party to be next held  
82 after the date of such primary. The persons receiving the  
83 highest number of votes in the state as delegates-at-large, to the  
84 number to which the state is entitled, shall be elected dele-  
85 gates. The persons receiving the highest number of votes as  
86 delegates in any congressional district, to the number to  
87 which the district is entitled, shall be elected delegates. Each  
88 delegate so elected shall then appoint an individual to serve  
89 as alternate delegate, and shall by registered letter notify the  
90 secretary of state of such appointment within forty days after  
91 the primary election.



## CHAPTER 74

(S. B. 634—By Senator Harman)

[Passed March 9, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to primary elections and nominating procedures; party conventions to nominate presidential electors; candidates; organization; duties, and changing the state convention dates.

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

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

### **ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

#### **§3-5-21. Party conventions to nominate presidential electors; candidates; organization; duties.**

1 Candidates for presidential electors shall be nominated  
2 by the delegated representatives of the political party  
3 assembled in a state convention to be held during the  
4 months of June, July or August next preceding any  
5 general election at which presidential electors are to be  
6 elected. The state executive committee of the political  
7 party, by resolution, shall designate the place and fix the  
8 date of such convention, shall prescribe the number of  
9 delegates thereto, and shall apportion the delegates  
10 among the several counties of the state in proportion to  
11 the vote cast in the state for the party's candidate for  
12 governor at the last preceding general election at which  
13 a governor was elected. The state executive committee  
14 shall also ascertain and designate all offices for which  
15 candidates are to be nominated at such convention.

16 At least sixty days prior to the date fixed for holding  
17 any state convention, the chairman of the party's state

18 executive committee shall cause to be delivered to the  
19 party's county executive committee in each county of the  
20 state a copy of the resolutions fixing the time and place  
21 for holding the state convention and prescribing the num-  
22 ber of delegates from each county to the convention.  
23 Within ten days after receipt of the copy of such resolu-  
24 tions, the party executive committee of each county shall  
25 meet and, by resolution, shall apportion the delegates to  
26 the state convention among the several magisterial dis-  
27 tricts of the county, on a basis of the vote received in the  
28 county by the candidate of the party for governor at the  
29 last preceding general election at which a governor was  
30 elected, but in such apportionment of county delegates  
31 each magisterial district shall be entitled to at least one  
32 delegate to such state convention. The party's county  
33 executive committee shall call a meeting of the members  
34 of the political party in mass convention in the several  
35 magisterial districts of the county, which district meeting  
36 shall be held at least thirty days prior to the date fixed  
37 for the state convention and at which meeting the mem-  
38 bers of the political party in each magisterial district  
39 shall elect the number of delegates to which such district  
40 is entitled in the state convention.

41 The meeting place in the magisterial district shall be  
42 as central and convenient as can reasonably be selected,  
43 and all recognized members of the political party shall be  
44 entitled to participate in any such mass convention and in  
45 the selection of delegates. Notice of the time and place of  
46 holding the several magisterial district mass conventions  
47 and of the person who shall act as temporary chairman  
48 thereof shall be given by publication as a Class II-O legal  
49 advertisement in compliance with the provisions of article  
50 three, chapter fifty-nine of this code, and the publication  
51 area for such publication shall be the county. The first  
52 publication shall be made not more than fifteen days  
53 and the second publication shall be made not less than  
54 five days prior to the date fixed for holding the conven-  
55 tion. The notice published shall specify the number of  
56 delegates which each magisterial district in the county is  
57 entitled to elect to the state convention.

58 Upon assembling, the mass convention of each magis-  
59 terial district shall choose a chairman and a secretary,  
60 who, within five days after the holding of such con-  
61 vention, shall certify to the chairman of the state execu-  
62 tive committee of the political party and the chairman of  
63 the county committee of the political party, the names  
64 and addresses of the parties selected as delegates to the  
65 state convention.

66 All contests over the selection of delegates to conven-  
67 tions shall be heard and determined by the party execu-  
68 tive committee of the county from which the delegates  
69 are chosen, and such county executive committee shall,  
70 upon written petition of any contest, meet for such hear-  
71 ings and determinations within ten days after the holding  
72 of such magisterial district mass convention. The circuit  
73 court of the county and the supreme court of appeals of  
74 the state shall have concurrent original jurisdiction to  
75 review, by mandamus or other proper proceeding, the  
76 decision of a county executive committee in any con-  
77 test.

78 The delegates chosen and certified by and from the  
79 several magisterial districts in the state, and, in the event  
80 of any contest, those prevailing in the contest, shall make  
81 up the state convention. The number present of those  
82 entitled to participate in any convention shall cast the  
83 entire vote to which the county is entitled in such con-  
84 vention, and it shall require a majority vote to nominate  
85 any candidate for office.

86 All nominations made at state conventions shall be  
87 certified within fifteen days thereafter, by the chairman  
88 and the secretary of the convention, to the secretary of  
89 state, who shall certify them to the clerk of the circuit  
90 court of each county concerned, and the names of the  
91 persons so nominated shall be printed upon the regular  
92 ballot to be voted at the ensuing general election, except  
93 that the names of the presidential elector candidates shall  
94 not be printed thereon.

95 The delegates to any state convention may formulate

96 and promulgate such party platform or declaration of  
97 party principles as to them shall seem advisable.

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## CHAPTER 75

(Com. Sub. for S. B. 263—By Senator Boettner)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article four-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact article four-c of said chapter; to repeal article three-b, chapter thirty of said code; to amend and reenact section nine, article fourteen, chapter seventeen-c of said code; to amend and reenact section one, article two-c, chapter twenty-two of said code; to amend and reenact section two, article six-a, chapter forty-nine of said code; and to amend article six, chapter sixty-one of said code by adding thereto a new section, designated section twenty, all relating to emergency medical services; providing a short title; purpose; definitions; establishing office of emergency medical services; establishing emergency medical services advisory council and providing for powers and duties; powers and duties of director under article; exempting certain vehicles and aircraft; providing standards for emergency medical service personnel; requirements for training programs; extension of certificates and temporary certificates; providing for refusal or suspension and revocation of certificates or temporary certificates and appeal therefrom; establishing liability for the cost of ambulance service; providing violations and criminal penalties; authorizing injunctive relief; listing services that may be performed by emergency medical service personnel; giving certain powers to emergency service personnel during emergency communications failures and disasters; limiting liability of providers of emergency medical services and requiring insurance in lieu thereof; limiting liability for failure to obtain consent; providing for person in charge in case of emergencies; providing the offense of obstructing emergency medical services personnel

and a criminal penalty therefor; allowing service reciprocity agreements for mutual aid; giving the director authority to restrict services by out-of-state providers; giving the director of the department of health authority to make regulations; providing for severability; prohibiting the following of authorized emergency vehicles; providing for emergency service personnel in coal mines; mandating emergency medical service personnel to report suspected child abuse and neglect; and providing the offense of falsely reporting an emergency incident and a criminal penalty therefor.

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

That article four-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article four-c of said chapter be amended and reenacted; that article three-b, chapter thirty be repealed; that section nine, article fourteen, chapter seventeen-c of said code be amended and reenacted; that section one, article two-c, chapter twenty-two of said code be amended and reenacted; that section two, article six-a, chapter forty-nine of said code be amended and reenacted; and that article six, chapter sixty-one of said code be amended by adding thereto a new section, designated section twenty, all to read as follows:

## **Chapter**

**16. Public Health.**

**17C. Traffic Regulations and Laws of the Road.**

**22. Mines and Minerals.**

**49. Child Welfare.**

**61. Crimes and Their Punishment.**

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.**

- § 16-4C-1. Emergency medical services act.
- § 16-4C-2. Purposes of article.
- § 16-4C-3. Definitions.
- § 16-4C-4. Office of emergency medical services created; staffing.
- § 16-4C-5. Emergency medical services advisory council; duties, composition, appointment, meetings, compensation and expenses.
- § 16-4C-6. Powers and duties of director.
- § 16-4C-7. Vehicles, aircraft and persons aboard them exempted from requirements of article.

- § 16-4C-8. Standards for emergency medical service personnel.
- § 16-4C-9. Suspension or revocation of certificate or temporary certificate.
- § 16-4C-10. Notice of refusal, suspension or revocation of certificate; appeals to director; judicial review.
- § 16-4C-11. Liability for cost of ambulance service.
- § 16-4C-12. Violations; criminal penalties.
- § 16-4C-13. Actions to enjoin violations; injunctive relief.
- § 16-4C-14. Services that may be performed by emergency medical services personnel.
- § 16-4C-15. Powers of emergency medical technicians-intermediate, mobile intensive care paramedics during emergency communications failures and disasters.
- § 16-4C-16. Limitation of liability; mandatory errors and omissions insurance.
- § 16-4C-17. Limitation of liability for failure to obtain consent.
- § 16-4C-18. Authority of emergency medical services personnel in charge of emergencies.
- § 16-4C-19. Obstructing emergency medical service personnel.
- § 16-4C-20. Service reciprocity agreements for mutual aid.
- § 16-4C-21. Restriction for provision of emergency medical services by out-of-state emergency medical service personnel or providers of emergency medical services.
- § 16-4C-22. Authority of the director to make regulations.

**§16-4C-2. Purposes of article.**

1 The Legislature finds and declares: (1) That the safe and  
2 efficient operation of life-saving and life-preserving  
3 emergency medical service to meet the needs of citizens of  
4 this state is a matter of general public interest and concern;  
5 (2) that, in order to ensure provision of adequate emergency  
6 medical services within this state for the protection of the  
7 public health, safety and welfare, it is imperative that  
8 minimum standards for emergency medical service  
9 personnel be established and enforced by the state; (3) that  
10 emergency medical service personnel should meet  
11 minimum training standards promulgated by the director;  
12 (4) that it is the public policy of this state to enact legislation  
13 to carry out these purposes and comply with minimum  
14 standards for emergency medical service personnel as  
15 specified herein; and (5) that any patient who receives  
16 emergency medical service and who is unable to consent  
17 thereto should be liable for the reasonable cost of such  
18 service.

**§16-4C-3. Definitions.**

1 As used in this article, unless the context clearly requires  
2 a different meaning:

3     “Ambulance” means any privately or publicly owned  
4 vehicle or aircraft which is designed, constructed or  
5 modified; equipped or maintained; and operated for the  
6 transportation of patients.

7     “Ambulance service” means the transportation, and treat-  
8 ment at the site of pickup and en route, of a patient to or  
9 from a place where medical, hospital or clinical service is  
10 normally available.

11     “Council” means the emergency medical service advisory  
12 council created pursuant to section five of this article.

13     “Director” means the director of health.

14     “Emergency medical services” means all services which  
15 are set forth in P.L. 93-154 “The Emergency Medical  
16 Services Act of 1973” and those included in and made a part  
17 of the emergency medical services plan of the department of  
18 health inclusive of, but not limited to, caring for and giving  
19 life-saving or life-preserving treatment to a patient.

20     “Emergency medical service personnel” means any  
21 person certified by the director to provide emergency  
22 medical services as set out in section eight of this article and  
23 includes, but is not limited to, emergency medical service  
24 attendants, emergency medical technicians, emergency  
25 medical technicians-ambulance, emergency medical  
26 technicians-intermediate, mobile intensive care  
27 paramedics, emergency medical technician-paramedics,  
28 physicians, osteopathic physicians, persons certified to  
29 provide cardiopulmonary resuscitation, registered nurses  
30 and licensed practical nurses who have been trained in first  
31 aid, or other licensed or certified health providers who meet  
32 the standards and training requirements as determined by  
33 the director.

34     “Emergency medical service attendant” means a person  
35 certified by the director to render such emergency medical  
36 services as are authorized for such emergency medical  
37 service attendant in section eight of this article.

38     “Emergency medical technician” means a person  
39 certified by the director to render such emergency medical  
40 services as are authorized for such emergency medical  
41 technician in section eight of this article.

42 “Emergency medical technician-ambulance” means a  
43 person certified by the director to render such emergency  
44 medical services as are authorized for such emergency  
45 medical technician-ambulance in section eight of this  
46 article.

47 “Emergency medical technician-intermediate” means a  
48 person certified by the director to render such emergency  
49 medical services as are authorized for such emergency  
50 medical technician-intermediate in section eight of this  
51 article.

52 “Mobile intensive care paramedic” means a person  
53 certified by the director to render such emergency medical  
54 services as are authorized for such mobile intensive care  
55 paramedic in section eight of this article.

56 “Emergency medical technician-paramedic” means a  
57 person certified by the director to render such emergency  
58 medical services as are authorized for such emergency  
59 medical technician-paramedic in section eight of this  
60 article.

61 “Emergency medical service provider” means any  
62 authority, person, corporation, partnership or other entity,  
63 public or private, which owns or operates an ambulance and  
64 which provides emergency medical service in this state.

65 “Governing body” has the meanings ascribed to it as  
66 applied to a municipality in subdivision (1), subsection (b),  
67 section two, article one, chapter eight of this code.

68 “Line officer” means the emergency medical service per-  
69 sonnel, present at the scene of an accident, injury or illness,  
70 who has taken the responsibility for patient care.

71 “Medical command” means the issuing of orders by a  
72 physician or osteopathic physician from a medical facility  
73 to emergency medical service personnel for the purpose of  
74 providing appropriate patient care.

75 “Municipality” has the meaning ascribed to it in subdivi-  
76 sion (1), subsection (a), section two, article one, chapter  
77 eight of this code.

78 “Patient” means any sick, injured, wounded or otherwise



79 incapacitated or helpless person, or an expectant mother  
80 who needs medical, hospital or clinical service under an  
81 existing or imminent emergency situation.

82 "Service reciprocity" means the provision of emergency  
83 medical services to citizens of this state by emergency  
84 medical service personnel certified to render such services  
85 by a neighboring state.

86 "Small emergency medical service provider" means any  
87 emergency medical service provider which is made up of  
88 less than twenty emergency medical service personnel.

**§16-4C-4. Office of emergency medical services created;  
staffing.**

1 There is hereby created within state government under  
2 the director of the department of health an office to be  
3 known as the office of emergency medical services.

4 The director may employ such technical, clerical,  
5 stenographic and other personnel as may be necessary to  
6 carry out the purposes of this article. Such personnel may  
7 be paid from funds appropriated therefor or from such  
8 other funds as may be made available for carrying out the  
9 purposes of this article.

10 The office of emergency medical services as created by  
11 former section four, article four-d of this chapter, shall  
12 continue in existence as the office of emergency medical  
13 services established by this section.

**§16-4C-5. Emergency medical services advisory council;  
duties, composition, appointment, meetings,  
compensation and expenses.**

1 The emergency medical service advisory council,  
2 heretofore created and established by former section seven  
3 of this article, shall be continued for the purpose of  
4 developing, with the director, standards for emergency  
5 medical service personnel and for the purpose of providing  
6 advice to the office of emergency medical services and the  
7 director thereof, as established by section four of this article  
8 with respect to reviewing and making recommendations for  
9 and providing assistance to the establishment and

10 maintenance of adequate emergency medical services for  
11 all portions of this state.

12 The council shall have the duty to advise the director in  
13 all matters pertaining to his duties and functions in relation  
14 to carrying out the purposes of this article.

15 The council shall be composed of thirteen members  
16 appointed by the governor by and with the advice and  
17 consent of the Senate. Within twenty days of the effective  
18 date of this act the West Virginia professional paramedic  
19 and EMT association shall submit to the governor a list of  
20 six names of representatives from their association and a  
21 list of three names shall be submitted to the governor of  
22 representatives of their respective organizations by the  
23 West Virginia association of county officials, West Virginia  
24 state firemen's association, West Virginia hospital  
25 association, West Virginia state medical association, West  
26 Virginia chapter of the American college of emergency  
27 physicians, West Virginia emergency medical services  
28 administrators association and the state department of  
29 education. Within thirty days of the effective date of this act  
30 the governor shall appoint from the respective lists  
31 submitted two persons who represent the West Virginia  
32 professional paramedic and EMT association, and one  
33 person from the West Virginia association of county  
34 officials, West Virginia state firemen's association, West  
35 Virginia hospital association, West Virginia state medical  
36 association, West Virginia chapter of the American college  
37 of emergency physicians, West Virginia emergency medical  
38 services administrators association and the state  
39 department of education. The governor shall in addition  
40 appoint one person to represent emergency medical service  
41 providers operating within the state, one person to  
42 represent small emergency medical service providers  
43 operating within this state and two persons to represent the  
44 general public.

45 The council shall choose its own chairman and meet at the  
46 call of the director at least quarterly.

47 The members of such council may be reimbursed for any  
48 and all reasonable and necessary expenses actually  
49 incurred in the performance of their duties.

**§16-4C-6. Powers and duties of director.**

1 The director shall have the following powers and duties:

2 (a) In accordance with chapter twenty-nine-a of this  
3 code, to promulgate rules and regulations regarding the  
4 age, training, retraining, testing and certification and  
5 recertification of emergency medical service personnel:  
6 *Provided*, That the director may not promulgate any rule or  
7 regulation until it is approved by the emergency medical  
8 services advisory council. The council shall take no action  
9 unless a quorum is present.

10 (b) To apply for, receive and expend advances, grants,  
11 contributions and other forms of assistance from the state  
12 or federal government or from any private or public  
13 agencies or foundations to carry out the provisions of this  
14 article.

15 (c) To design, develop and annually review a statewide  
16 emergency medical services implementation plan. Such  
17 plan shall recommend aid and assistance and all other such  
18 acts as shall be necessary to carry out the purposes of this  
19 article:

20 (1) To encourage local participation by area, county and  
21 community officials and area and regional emergency  
22 medical services boards of directors; and

23 (2) To develop a system for monitoring and evaluating  
24 emergency medical services programs throughout the state.

25 (d) To provide professional and technical assistance and  
26 to make information available to regional and area  
27 emergency medical services boards of directors and other  
28 potential applicants or program sponsors of emergency  
29 medical services for purposes of developing a statewide  
30 system of such services.

31 (e) To assist local government agencies or area and  
32 regional emergency medical services boards of directors  
33 and other public or private entities in obtaining federal,  
34 state or other available funds and services.

35 (f) To cooperate and work with federal, state and local  
36 governmental agencies, private organizations and other

37 entities as may be necessary to carry out the purposes of this  
38 article.

39 (g) To acquire in the name of the state by grant,  
40 purchase, gift, devise or any other methods such  
41 appropriate real and personal property as may be  
42 reasonable and necessary to carry out the purposes of this  
43 article.

44 (h) To make grants and allocations of funds and  
45 property so acquired or which may have been appropriated  
46 to such agency to other agencies of state and local  
47 government as may be appropriate to carry out the purposes  
48 of this article.

49 (i) To expend and distribute by grant or bailment such  
50 funds and property to all such state and local agencies for  
51 the purpose of performing the duties and responsibilities of  
52 such agency all such funds which it may have so acquired or  
53 which may have been appropriated by the Legislature of  
54 this state.

55 (j) To develop a program to inform the public  
56 concerning emergency medical services programs.

57 (k) To review and disseminate information regarding  
58 federal grant assistance relating to emergency medical  
59 services.

60 (l) To prepare and submit to the governor and  
61 Legislature recommendations for legislation in the area of  
62 emergency medical services.

63 (m) To review and make recommendations for and to  
64 assist or aid in all projects and programs which provide for  
65 emergency medical services regardless of whether or not  
66 such projects or programs are funded through the office of  
67 emergency medical services. Such review and approval  
68 shall be required for all emergency medical services  
69 projects, programs or services for which application is  
70 made to receive state or federal funds for their operation  
71 after the effective date of this bill.

72 (n) To take all necessary and appropriate action to  
73 encourage and foster the cooperation of all emergency  
74 medical service providers and facilities within this state.

75 (o) Nothing in this article shall be construed to allow the  
76 director to dissolve, invalidate or eliminate any existing  
77 EMS program or ambulance providers in service at the time  
78 of adoption of the amendment to this article in the regular  
79 session of the Legislature in the year one thousand nine  
80 hundred eighty-four, or to deny them fair access to federal  
81 and state funding and to medical facilities and training  
82 programs, nor require an EMS program serving any  
83 community and having thirty or fewer active volunteers to  
84 have more than one person who is certified as an emergency  
85 medical service personnel notwithstanding the provisions of  
86 section eight of this article or any other provision of this  
87 code.

**§16-4C-7. Vehicles, aircraft and persons aboard them  
exempted from requirements of article.**

1 The following vehicles and aircraft are exempted from  
2 the application of the provisions of this article and rules  
3 promulgated pursuant to it and persons aboard them are  
4 not required to comply with the provisions of section eight  
5 of this article:

6 (a) Privately owned vehicles and aircraft not ordinarily  
7 used in the business or service of transporting patients.

8 (b) Vehicles and aircraft used as ambulances in case of a  
9 catastrophe or emergency when the ambulances normally  
10 staffed by certified emergency medical service personnel  
11 based in the locality of the catastrophe or emergency are  
12 insufficient to render the service required.

13 (c) Ambulances based outside this state, except that  
14 emergency medical service personnel aboard any such  
15 ambulance receiving a patient within this state for  
16 transportation to a location within this state must comply  
17 with the provisions of this article and the rules promulgated  
18 pursuant to it except in the event of a catastrophe or  
19 emergency when the ambulances normally staffed by  
20 certified emergency medical service personnel based in the  
21 locality of the catastrophe or emergency are insufficient to  
22 render the services required.

23 (d) Ambulances owned by or operated under the direct  
24 control of a governmental agency of the United States.

25 (e) Vehicles and aircraft designed primarily for rescue  
26 operations which do not ordinarily transport patients.

**§16-4C-8. Standards for emergency medical service personnel.**

1 (1) After the first day of January, one thousand nine  
2 hundred eighty-five, every ambulance which provides  
3 ambulance service or emergency medical services shall  
4 carry two persons who are certified as emergency medical  
5 service personnel, one of which personnel shall be in the  
6 patient compartment at all times when a patient is being  
7 transported by such ambulance. As a minimum, of the  
8 personnel carried by any ambulance operated by any  
9 emergency medical service provider, one shall be trained in  
10 cardiopulmonary resuscitation and one shall be certified as  
11 an emergency medical service attendant.

12 (2) After the first day of July, one thousand nine  
13 hundred eighty-six, at least one of the emergency medical  
14 services personnel referred to in the immediately preceding  
15 subsection shall be minimally certified as an emergency  
16 medical technician-ambulance on any emergency call and  
17 such person shall be in the patient compartment at all times  
18 a patient is being transported.

19 As a minimum, the training for each class of emergency  
20 medical service personnel shall include

21 (a) Emergency medical service attendant: Shall have  
22 earned and possess valid certificates from the department  
23 or by authorities recognized and approved by the director in  
24 advanced first aid or equivalent training and  
25 cardiopulmonary resuscitation.

26 (b) Emergency medical technician: Shall have  
27 successfully completed the course on emergency care of the  
28 sick and injured established by the director or by  
29 authorities recognized and approved by the director.

30 (c) Emergency medical technician-ambulance: Shall  
31 have successfully completed the course for certification as  
32 an emergency medical technician-ambulance as  
33 established by the director or authorities recognized and  
34 approved by the director.

35 (d) Emergency medical technician-intermediate: Shall  
36 have successfully completed the course for certification as  
37 an emergency medical technician-ambulance and such  
38 other course of study and certification as may be  
39 established by the director.

40 (e) Mobile intensive care paramedic: Shall have  
41 successfully completed the course for certification as a  
42 mobile intensive care paramedic and such other course of  
43 study and certification as may be established by the  
44 director.

45 (f) Emergency medical technician-paramedic: Shall  
46 have completed the course for certification as an emergency  
47 medical technician-paramedic and such other course of  
48 study and certification as may be established by the  
49 director.

50 The foregoing shall not be considered to limit the power  
51 of the director to prescribe training, certification and  
52 recertification standards.

53 State and county continuing education and  
54 recertification programs for all levels of emergency medical  
55 service providers shall be available to emergency medical  
56 service providers at a convenient site within the county in  
57 which the emergency medical service provider operates, or  
58 in an adjacent county within thirty minutes travel time of  
59 the provider's primary place of operation. Such continuing  
60 education programs shall be provided free of charge by the  
61 department of health to all nonprofit emergency medical  
62 service providers.

63 (3) Any person desiring emergency medical services  
64 personnel certification shall apply to the director using  
65 forms and procedures prescribed by the director. Upon  
66 receipt of such application, the director shall determine if  
67 the applicant meets the requirements for certification and  
68 examine the applicant, as in his discretion, is necessary to  
69 make such a determination. If it is determined that the  
70 applicant meets all of the requirements, the director shall  
71 issue an appropriate emergency medical service personnel  
72 certificate to the applicant. Emergency medical service  
73 personnel certificates issued by the director shall be valid

74 for a period not to exceed three years from the date of their  
75 issuance unless sooner suspended or revoked by the  
76 director. Certificates may be renewed for additional  
77 periods not to exceed three years after review and  
78 determination by the director that such holder meets the  
79 requirements established for emergency medical service  
80 personnel.

81 (4) The director may issue a temporary emergency  
82 medical service personnel certificate to an applicant, with  
83 or without examination of the applicant, when he finds  
84 such issuance to be in the public interest. Unless sooner  
85 suspended or revoked a temporary certificate shall be valid  
86 initially for a period not exceeding one hundred twenty  
87 days and it shall not be renewed thereafter unless the  
88 director finds such renewal to be in the public interest:  
89 *Provided*, That the expiration date of any such temporary  
90 certificate issued shall be extended until the holder of such  
91 certificate is afforded at least one opportunity to take an  
92 emergency medical services personnel training course  
93 within the general area where he serves as an emergency  
94 medical service personnel, but the expiration date shall not  
95 be extended for any longer period of time or for any other  
96 reason.

97 The director may, on petition from an emergency medical  
98 service provider, squad, ambulance authority or county  
99 commission, grant an extension for compliance with  
100 paragraphs (1) and (2) of this section where circumstances  
101 prevent such emergency medical service provider, squad,  
102 ambulance authority or county commission from meeting  
103 the time frames indicated. Such extension shall be for no  
104 longer than twelve calendar months from the date of the  
105 request, and the request for extension must include such  
106 information as may be required by the director to determine  
107 if all reasonable efforts have been made to comply with this  
108 section. No petitioner shall be granted more than one  
109 extension under this section.

**§16-4C-9. Suspension or revocation of certificate or temporary  
certificate.**

1 (a) The director may at any time upon his own motion,  
2 and shall, upon the verified written complaint of any



3 person, cause an investigation to be conducted to determine  
4 whether there are any grounds for the suspension or  
5 revocation of a certificate or temporary certificate issued  
6 under the provisions of this article.

7 (b) The director shall suspend or revoke any certificate  
8 or temporary certificate when he finds the holder thereof  
9 has:

10 (1) Obtained a certificate or temporary certificate by  
11 means of fraud or deceit; or

12 (2) Been grossly incompetent and/or grossly negligent  
13 as defined by the director in accordance with rules and  
14 regulations or by prevailing standards of emergency  
15 medical services care; or

16 (3) Failed or refused to comply with the provisions of  
17 this article or any reasonable rule and regulation  
18 promulgated by the director hereunder or any order or final  
19 decision of the director.

20 (c) The director shall suspend or revoke any certificate  
21 or temporary certificate if he finds the existence of any  
22 grounds which would justify the denial of an application for  
23 such certificate or temporary permit if application were  
24 then being made for it.

**§16-4C-10. Notice of refusal, suspension or revocation of  
certificate; appeals to director; judicial review.**

1 An application for an original emergency medical service  
2 personnel certificate, for the renewal of an emergency  
3 medical service personnel certificate or for a temporary  
4 emergency medical service personnel certificate, shall be  
5 acted upon by the director and the director's certificate  
6 delivered or mailed, or a copy of any order of the director  
7 denying any such application delivered or mailed to the  
8 applicant, by the director within fifteen days after the date  
9 upon which such application including test scores, if  
10 applicable, was received by the director.

11 Whenever the director refuses to issue an emergency  
12 medical service personnel certificate or a temporary  
13 emergency medical service personnel certificate, or

14 suspends or revokes an emergency medical service  
15 personnel certificate, or a temporary emergency medical  
16 service personnel certificate, he shall make and enter an  
17 order to that effect, which order shall specify the reasons for  
18 such denial, suspension or revocation, and shall cause a  
19 copy of such order to be served in person or by certified  
20 mail, return receipt requested, on the applicant or  
21 certificate holder, as the case may be.

22 Whenever a certificate is suspended or revoked, the  
23 director shall in the order of suspension or revocation direct  
24 the holder thereof to return his certificate to the director. It  
25 shall be the duty of such certificate holder to comply with  
26 any such order following expiration of the period provided  
27 for an appeal to the director.

28 Any applicant or certificate holder, as the case may be,  
29 adversely affected by an order made and entered by the  
30 director may appeal to the director for an order vacating or  
31 modifying such order or for such order as the director  
32 should have entered. The person so appealing shall be  
33 known as the appellant. An appeal shall be perfected by  
34 filing a notice of appeal with the director within ten days  
35 after the date upon which the appellant received the copy of  
36 such order. The notice of appeal shall be in such form and  
37 contain such information as may be prescribed by the  
38 director, but in all cases shall contain a description of any  
39 order appealed from and the grounds for said appeal. The  
40 filing of the notice of appeal shall operate to stay or suspend  
41 execution of any order which is the subject matter of the  
42 appeal. All of the pertinent provisions of article five,  
43 chapter twenty-nine-a of this code apply to and govern the  
44 hearing on appeal and the administrative procedures in  
45 connection with and following such hearing, with like  
46 effect as if the provisions of said article five, chapter  
47 twenty-nine-a of this code were set forth in extenso herein.

48 The director shall set a hearing date which shall be not  
49 less than ten days after he received the notice of appeal  
50 unless there is a postponement or continuance. The director  
51 may postpone or continue any hearing on his own motion, or  
52 for good cause shown upon the application of the appellant.  
53 The appellant shall be given notice of said hearing in person

54 or by certified mail, return receipt requested. Any such  
55 hearing shall be held in Charleston, Kanawha County, West  
56 Virginia, unless another place is specified by the director.

57 After such hearing and consideration of all of the  
58 testimony, evidence and record in the case, the director  
59 shall make and enter an order affirming, modifying or  
60 vacating his initial order or shall make and enter any new  
61 order. Such order shall be accompanied by findings of fact  
62 and conclusions of law as specified in section three, article  
63 five, chapter twenty-nine-a of this code, and a copy of such  
64 order and accompanying findings and conclusions shall be  
65 served upon the appellant, in person or by certified mail,  
66 return receipt requested. The order of the director shall be  
67 final unless vacated or modified upon judicial review  
68 thereof.

69 Any appellant adversely affected by a final order made  
70 and entered by the director is entitled to judicial review  
71 thereof. All of the pertinent provisions of section four,  
72 article five, chapter twenty-nine-a of this code shall apply  
73 to and govern such review with like effect as if the  
74 provisions of said section four, article five, chapter twenty-  
75 nine-a of this code were set forth in extenso herein. The  
76 judgment of the circuit court shall be final unless reversed,  
77 vacated or modified on appeal to the supreme court of  
78 appeals in accordance with the provisions of section one,  
79 article six, chapter twenty-nine-a of this code.

**§16-4C-11. Liability for cost of ambulance service.**

1 Any patient who receives ambulance service and who is  
2 unable to give his consent to or contract for the service,  
3 whether or not he has agreed or consented to liability for the  
4 service, shall be liable in implied contract to the entity  
5 providing the ambulance service for the cost thereof.

6 Any person who receives ambulance service upon his  
7 request for such service shall be liable for the cost thereof.

**§16-4C-12. Violations; criminal penalties.**

1 Any person who operates an ambulance with an  
2 insufficient number of emergency medical service  
3 personnel aboard when not lawfully permitted to do so, or

4 who represents himself as a certified emergency medical  
5 service personnel knowing such representation to be untrue,  
6 shall be guilty of a misdemeanor, and, upon conviction  
7 thereof, shall be fined not less than one hundred dollars nor  
8 more than one thousand dollars.

**§16-4C-13. Actions to enjoin violations; injunctive relief.**

1 Whenever it appears to the director that any person has  
2 been or is violating or is about to violate any provisions of  
3 this article or any final order of the director, the director  
4 may apply in the name of the state, to the circuit court of the  
5 county in which the violation or violations or any part  
6 thereof has occurred, is occurring or is about to occur, for an  
7 injunction against such person and any other persons who  
8 have been, are or are about to be, involved in, or in any way  
9 participating in, any practices, acts or omissions, so in  
10 violation, enjoining such person or persons from any such  
11 violation or violations. Such application may be made and  
12 prosecuted to conclusion whether or not any such violation  
13 or violations have resulted or shall result in prosecution or  
14 conviction under the provisions of section twelve of the  
15 article.

16 Upon application by the director, the circuit courts of this  
17 state may by mandatory or prohibitory injunction compel  
18 compliance with the provisions of this article and all final  
19 orders of the director.

20 The circuit court may issue a temporary injunction in any  
21 case pending a decision on the merits of any application  
22 filed.

23 The judgment of the circuit court upon any application  
24 permitted by the provisions of this section shall be final  
25 unless reversed, vacated or modified on appeal to the  
26 supreme court of appeals. Any such appeal shall be sought  
27 in the manner and within the time provided by law for  
28 appeals from circuit courts in other civil cases.

**§16-4C-14. Services that may be performed by emergency  
medical services personnel.**

1 Notwithstanding any other provision of law, emergency  
2 medical service personnel, by each class, may provide the  
3 following care:

- 4 (1) Emergency medical services attendant — Render  
5 basic first-aid and cardiopulmonary resuscitation and  
6 other services as are established by the director.
- 7 (2) Emergency medical technician — Render care which  
8 may be performed by an emergency medical services  
9 attendant, and other services as are established by the  
10 director.
- 11 (3) Emergency medical technician-ambulance —  
12 Render the care permitted which may be performed by an  
13 emergency medical service attendant and by an emergency  
14 medical technician, and in addition, other services as are  
15 established by the director.
- 16 (4) Emergency medical technician-intermediate —  
17 Render the care permitted which may be performed by an  
18 emergency medical service attendant, emergency medical  
19 technician and emergency medical technician-ambulance,  
20 and in addition, upon the order of a medical command  
21 physician or surgeon and other services as are established  
22 by the director.
- 23 (5) Mobile intensive care paramedic — Render care  
24 which may be performed by an emergency medical service  
25 attendant, an emergency medical technician, emergency  
26 medical technician-ambulance, emergency medical  
27 technician-intermediate; and, in addition, upon order of a  
28 medical command physician or surgeon, perform any other  
29 services as are established by the director.
- 30 (6) Emergency medical technician-paramedic —  
31 Render care which may be performed by an emergency  
32 medical service attendant, an emergency medical  
33 technician, an emergency medical technician-ambulance,  
34 emergency medical technician-intermediate, mobile  
35 intensive care paramedic, and in addition, upon order of a  
36 medical command physician or surgeon, perform any other  
37 services as are established by the director.

**§16-4C-15. Powers of emergency medical technicians-intermediate, mobile intensive care paramedics and emergency medical technicians-paramedic during emergency communications failures and disasters.**

- 1 (1) If radio or telephone communications between an

2 emergency medical technician-intermediate, a mobile  
3 intensive care paramedic or an emergency medical  
4 technician-paramedic and physician fail during an  
5 emergency situation, such emergency medical technician-  
6 intermediate, mobile intensive care paramedic or  
7 emergency medical technician-paramedic may perform any  
8 procedure for which such emergency medical technician-  
9 intermediate, mobile intensive care paramedic or  
10 emergency medical technician-paramedic is authorized by  
11 section fourteen of this article if in the judgment of the  
12 emergency medical technician-intermediate, mobile  
13 intensive care paramedic or emergency medical technician-  
14 paramedic the life of the patient is in immediate danger and  
15 such care is required to preserve life.

16 (2) In the event of a disaster or other occurrence where  
17 the communication system between emergency medical  
18 technician-intermediate, mobile intensive care paramedic  
19 or emergency medical technician-paramedic and physician  
20 is unable to adequately convey individual direction to the  
21 emergency medical technician-intermediate, mobile  
22 intensive care paramedic or emergency medical technician-  
23 paramedic, such emergency medical technician-  
24 intermediate, mobile intensive care paramedic or  
25 emergency medical technician-paramedic may perform  
26 such services as are authorized by section fourteen of this  
27 article without direct voice contact with a medical  
28 command physician or written order of a medical command  
29 physician, and may release immediate control of such  
30 patient upon whom such services have been performed to  
31 any emergency medical services personnel in order that  
32 such emergency medical technician-intermediate, mobile  
33 intensive care paramedic or emergency medical technician-  
34 paramedic may provide immediate services to other  
35 patients affected by such disaster or such other occurrence.

36 (3) In the event that services are provided under the  
37 circumstances contemplated by this section, such  
38 emergency medical technician-intermediate, mobile  
39 intensive care paramedic or emergency medical technician-  
40 paramedic shall, within five days of the providing of such  
41 services, make a report to the director on forms prescribed  
42 by the director of what services were performed, the

43 identity of the patient or patients upon whom such services  
44 were performed and the circumstances justifying the  
45 provision of such services and such other information as  
46 may be required by the director.

**§16-4C-16. Limitation of liability; mandatory errors and omissions insurance.**

1 (1) On and after the first day of July, one thousand nine  
2 hundred eighty-five, every person, corporation, ambulance  
3 service, emergency medical service provider, emergency am-  
4 bulance authority, emergency ambulance service, or other  
5 persons which employ emergency medical services  
6 personnel with or without wages for ambulance service or  
7 provides ambulance service in any manner, shall obtain a  
8 policy of insurance insuring such person or entity and every  
9 employee, agent or servant thereof, against loss from the  
10 liability imposed by law for damages arising from any error  
11 or omission in the provision of emergency medical services  
12 as enumerated by this article, in an amount no less than one  
13 hundred thousand dollars per incident.

14 (2) No emergency medical services personnel or  
15 emergency medical services provider shall be liable for civil  
16 damages or injuries in excess of the amounts for which such  
17 persons or entities are actually insured, unless such  
18 damages or injuries are intentionally or maliciously  
19 inflicted.

20 (3) Every person or entity required to obtain a policy of  
21 insurance as contemplated by this section, shall furnish to  
22 the director on or before the first day of January of each  
23 calendar year proof of the existence of the policy of  
24 insurance required by this section.

25 (4) In the event that any such person or entity fails to  
26 secure a policy of insurance on or before the first day of  
27 July, one thousand nine hundred eighty-five, or before such  
28 person or entity undertakes the provision of emergency  
29 medical services or ambulance services, whichever shall  
30 occur last, and keep such policy of insurance in force  
31 thereafter, that person or entity is not entitled to the limited  
32 immunity created by subsection (2): *Provided*, That any  
33 physician or surgeon, who gives instructions to emergency

34 medical service personnel without being compensated  
35 therefor, or who treats any patient transported in an  
36 ambulance or treats any patient prior to such transport,  
37 without being compensated therefor, shall be entitled to the  
38 limited immunity provided in subsection (2) of this section.

**§16-4C-17. Limitation of liability for failure to obtain consent.**

1 No emergency medical services personnel may be subject  
2 to civil liability, based solely upon failure to obtain consent  
3 in rendering emergency medical services to any individual  
4 regardless of age where the patient is unable to give his  
5 consent for any reason, including minority, and where there  
6 is no other person reasonably available who is legally  
7 authorized to consent to the providing of such care or who is  
8 legally authorized to refuse to consent to the providing of  
9 such care.

10 Nothing in this article shall be construed to require medi-  
11 cal treatment or transportation for any adult in contraven-  
12 tion of his or her stated objection thereto upon religious  
13 grounds.

**§16-4C-18. Authority of emergency medical services personnel in charge of emergencies.**

1 When any department, agency or entity which provides  
2 emergency medical services under the authority of this  
3 article is responding to, operating at or returning from  
4 emergencies, any emergency medical services personnel  
5 serving in the capacity of an emergency medical services  
6 line officer in charge, shall control and direct the providing  
7 of emergency medical services. The emergency medical  
8 service personnel serving in the capacity of an emergency  
9 medical services line officer shall determine whether a  
10 patient shall be transported from the emergency scene,  
11 determine what care shall be rendered prior to such  
12 transport, determine what appropriate facility to which  
13 such patient shall be transported, and otherwise fully direct  
14 and control the providing of emergency medical services  
15 and patient care.

16 Nothing included in this section shall be construed to  
17 restrict or interfere with the authority of a fire officer in



18 charge to supervise or direct those fire department  
19 personnel under his command or to restrict any person from  
20 entering a hazardous area for which such fire officer has  
21 assumed the responsibility.

**§16-4C-19. Obstructing emergency medical service personnel.**

1 Any person who knowingly or intentionally obstructs or  
2 interferes with emergency medical services or rescue  
3 personnel performing or attempting to perform functions or  
4 duties as emergency medical services or rescue personnel  
5 shall be guilty of a misdemeanor, and, upon conviction  
6 thereof, shall be fined not more than one thousand dollars  
7 or confined in the county jail for a period not exceeding one  
8 year, or both fined and confined.

**§16-4C-20. Service reciprocity agreements for mutual aid.**

1 Any persons or entities providing lawful emergency  
2 medical services under the provisions of this article are  
3 hereby authorized in their discretion to enter into and  
4 renew service reciprocity agreements, for such period as  
5 they may deem advisable, with the appropriate emergency  
6 medical services providers, county, municipal or other  
7 governmental units or in counties contiguous to the state of  
8 West Virginia in the state of Ohio, the commonwealth of  
9 Pennsylvania, the state of Maryland, the commonwealth of  
10 Virginia or the commonwealth of Kentucky, in order to  
11 establish and carry into effect a plan to provide mutual aid  
12 across state lines, through the furnishing of properly  
13 certified personnel and equipment for the provision of  
14 emergency medical services in this state and such counties  
15 contiguous to this state upon written approval by the  
16 director.

17 No such person or entity may enter into any such  
18 agreement unless the agreement provides that each of the  
19 parties to such agreement shall waive any and all claims  
20 against the other parties thereto, which may arise out of  
21 their activities outside of their respective jurisdictions  
22 under such agreement and shall indemnify and save  
23 harmless the other parties to such agreement from all

24 claims by third parties for property damages or personal  
25 injuries which may arise out of the activities of the other  
26 parties to such agreement outside their respective  
27 jurisdictions under such agreement.

28 The director is hereby authorized to enter into service  
29 reciprocity agreements with appropriate officials in other  
30 states for the purpose of providing emergency medical  
31 services to the citizens of this state by emergency medical  
32 service personnel properly certified in their respective state  
33 or states. A formal agreement between the director and an  
34 authorized official of another state must be in effect prior to  
35 such service being provided. Individual certification of  
36 other state emergency medical service personnel is not  
37 required for purposes of providing services to West Virginia  
38 citizens following the creation of such agreement by the  
39 responsible officials.

**§16-4C-21. Restriction for provision of emergency medical services by out-of-state emergency medical service personnel or providers of emergency medical services.**

1 The director may issue an order on his own motion upon  
2 written request of any emergency medical service provider  
3 or county commission in this state, to restrict an out-of-state  
4 provider of emergency medical services or an out-of-state  
5 emergency medical service personnel to a particular  
6 geographic area of the state of West Virginia or prohibit  
7 such provider or personnel from providing emergency  
8 medical services within the borders of this state when in the  
9 opinion of the director such services are not required or do  
10 not meet the standards set forth herein or those established  
11 by rules and regulations as authorized by this article.

**§16-4C-22. Authority of the director to make regulations.**

1 The director is hereby authorized and empowered to  
2 make regulations pursuant to the procedures established in  
3 chapter twenty-nine-a of this code for the purpose of  
4 carrying out the purposes of this article.

**CHAPTER 17C. TRAFFIC REGULATIONS AND  
LAWS OF THE ROAD.**

**ARTICLE 14. MISCELLANEOUS RULES.**

**§17C-14-9. Following authorized emergency vehicles.**

1 The driver of any vehicle other than one on official  
2 business may not follow any authorized emergency vehicle  
3 traveling in response to a fire alarm or other emergency  
4 closer than five hundred feet or drive into or park such  
5 vehicle within the block where such authorized emergency  
6 vehicle has stopped in answer to a fire alarm or other  
7 emergency.

**CHAPTER 22. MINES AND MINERALS.**

**ARTICLE 2C. EMERGENCY MEDICAL PERSONNEL.**

**§22-2C-1. Emergency personnel in coal mines.**

1 (a) Emergency medical services personnel shall be  
2 employed on each shift at every mine that: (1) Employs more  
3 than ten employees and (2) more than eight persons are  
4 present on the shift. Said emergency medical services  
5 personnel shall be employed at their regular duties at a  
6 central location, or when more than one such person is  
7 required pursuant to subsection (b) or (c) at locations,  
8 convenient for quick response to emergencies; and further  
9 shall have available to them at all times such equipment as  
10 shall be prescribed by the director, in consultation with the  
11 director of the department of health.

12 (b) Until the first day of July, one thousand nine  
13 hundred eighty-five, emergency medical services personnel  
14 shall be defined as a medical service attendant as defined in  
15 article four-c, chapter sixteen of this code, paramedic as  
16 defined in article three-b, chapter thirty of this code, or  
17 physician assistant as defined in article three-a, chapter  
18 thirty of this code. At least one emergency medical services  
19 personnel shall be employed at a mine for every seventy  
20 employees or any part thereof who are engaged at one time,  
21 in the extraction, production or preparation of coal.

22 (c) After the first day of July, one thousand nine  
23 hundred eighty-five, emergency medical services personnel

24 shall be defined as a person who is certified as an emergency  
25 medical technician-mining, emergency medical technician,  
26 emergency medical technician-ambulance, emergency  
27 medical technician-intermediate, mobile intensive care  
28 paramedic, emergency medical technician-paramedic as  
29 defined in section three, article four-c, chapter sixteen of  
30 this code, or physician assistant as defined in section  
31 sixteen, article three-a, chapter thirty of this code. At least  
32 one emergency medical services personnel shall be  
33 employed at a mine for every fifty employees or any part  
34 thereof who are engaged at any time, in the extraction,  
35 production or preparation of coal.

36 (d) A training course designed specifically for  
37 certification of emergency medical technician-mining  
38 shall be developed at the earliest practicable time by the  
39 director of health in consultation with the board of miner  
40 training, education and certification. The training course  
41 for initial certification as an emergency medical  
42 technician-mining shall not be less than sixty hours, which  
43 shall include, but is not limited to, mast trouser application,  
44 basic life support skills and emergency room observation  
45 or other equivalent practical exposure to emergencies as  
46 prescribed by the director of the department of health.

47 (e) The maintenance of a valid emergency medical  
48 technician-mining certificate may be accomplished  
49 without taking a three year recertification examination  
50 provided that such emergency medical technician-mining  
51 personnel completes an eight hour annual retraining and  
52 testing program prescribed by the director of health in  
53 consultation with the board of miner training, education  
54 and certification.

55 (f) All emergency medical services personnel currently  
56 certified as emergency medical service attendant,  
57 emergency medical technician shall receive certification as  
58 emergency medical technicians without further training  
59 and examination for the remainder of their three year  
60 certification period; such emergency medical service  
61 attendant, emergency medical technician may upon  
62 expiration of such certification become certified as an  
63 emergency medical technician-mining upon completion of

64 the eight hour retraining program referred to in subsection  
65 (e) above.

## **CHAPTER 49. CHILD WELFARE.**

### **ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.**

#### **§49-6A-2. Persons mandated to report suspected abuse and neglect.**

1 When any medical, dental or mental health professional,  
2 Christian Science practitioner, religious healer, school  
3 teacher or other school personnel, social service worker,  
4 child care or foster care worker, emergency medical  
5 services personnel, peace officer or law-enforcement  
6 official has the reasonable cause to suspect that a child is  
7 neglected or abused or observes the child being subjected to  
8 conditions that are likely to result in abuse or neglect, such  
9 person shall immediately report the circumstances or cause  
10 a report to be made to the state department of human  
11 services: *Provided*, That any person required to report  
12 under this article who is a member of the staff of a public or  
13 private institution, school, facility or agency shall  
14 immediately notify the person in charge of such institution,  
15 school, facility or agency or a designated agent thereof, who  
16 shall report or cause a report to be made. However, nothing  
17 in this article is intended to prevent individuals from  
18 reporting on their own behalf.

19 In addition to those persons and officials specifically  
20 required to report situations involving suspected abuse or  
21 neglect of children, any other person may make a report if  
22 such person has reasonable cause to suspect that a child has  
23 been abused or neglected in a home or institution or  
24 observes the child being subjected to conditions or  
25 circumstances that would reasonably result in abuse or  
26 neglect.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 6. CRIMES AGAINST THE PEACE.**

**§61-6-20. Falsely reporting an emergency incident.**

1 A person is guilty of reporting a false emergency incident  
2 when, knowing the information reported, conveyed or  
3 circulated is false or baseless, he:

4 (1) Initiates or circulates a false report or warning of or  
5 impending occurrence of a fire, explosion, crime,  
6 catastrophe, accident, illness or other emergency under  
7 circumstances in which it is likely that public alarm or  
8 inconvenience will result or that firefighting apparatus,  
9 ambulance apparatus, one or more rescue vehicles or other  
10 emergency apparatus might be summoned; or

11 (2) Reports, by word or action, to any official or quasi-  
12 official agency or organization having the function of  
13 dealing with emergencies involving danger to life or  
14 property, an alleged occurrence or impending occurrence of  
15 a fire, explosion, crime, catastrophe, accident, illness or  
16 other emergency in which it is likely that public alarm or  
17 inconvenience will result or that firefighting apparatus,  
18 ambulance apparatus, one or more rescue vehicles or other  
19 emergency apparatus might be summoned, which did not  
20 occur, does not in fact exist; or

21 (3) Reports to a law-enforcement officer or agency the  
22 alleged occurrence of any offense or incident which did not  
23 in fact occur or an allegedly impending occurrence of an  
24 offense or incident which is not in fact about to occur or  
25 false information relating to an actual offense or incident or  
26 to the alleged implication of some person therein; or

27 (4) Without just cause, calls or summon by telephone,  
28 fire alarm system or otherwise, any firefighting apparatus,  
29 ambulance apparatus, rescue vehicles or other emergency  
30 vehicles.

31 Any person who violates this section is guilty of a  
32 misdemeanor, and, upon conviction thereof, shall be fined  
33 not more than five hundred dollars or confined in the  
34 county jail not more than six months, or both fined and  
35 confined.

## CHAPTER 76

(S. B. 571—By Senator Craigo)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one-a, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the employee suggestion award board; composition of board.

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

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

### ARTICLE 1A. EMPLOYEE SUGGESTION AWARD BOARD.

#### §5A-1A-2. Board created.

1 There is hereby established an employee suggestion  
2 award board which shall be composed of the commis-  
3 sioner of finance and administration or his designee, the  
4 commissioner of the department of labor or his designee,  
5 the president of the Senate or his designee, the speaker  
6 of the House of Delegates or his designee, one member of  
7 the House of Delegates to be appointed by the speaker of  
8 the House, one member of the Senate to be appointed by  
9 the president of the Senate, and the commissioner of the  
10 department of employment security or his designee. The  
11 terms of the members of the board shall be consistent  
12 with the terms of the offices to which they have been  
13 elected or appointed.

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## CHAPTER 77

(Com. Sub. for S. B. 672—By Senator Boettner)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-nine, article two, chapter forty-four of the code of West Virginia, one

thousand nine hundred thirty-one, as amended; to amend and reenact section one, article three-a of said chapter forty-four; to further amend said article three-a by adding thereto a new section, designated section four-a; and to amend and reenact section forty-three of said article three-a, all relating to waiver of final settlement of estates; county election on optional system for settlement of estates; providing for settlement by short form; and applications by fiduciary supervisor to county commission for additional funds.

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

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

**Article**

2. Proof and allowance of claims against estates of decedents.
- 3A. Optional procedure for proof and allowance of claims against estates of decedents; county option.

**ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.**

**§44-2-29. Waiver of final settlement.**

1 In all estates of decedents subject to administration under  
 2 this article where an inheritance tax release has been filed  
 3 with the clerk and more than ninety days has elapsed since  
 4 the filing of any notice required by section one of this  
 5 article, a final settlement may be waived by a waiver  
 6 containing an affidavit made by the personal  
 7 representative, that the time for filing of claims has expired,  
 8 that no known and unpaid claims exist against the estate,  
 9 and that all heirs have each been advised of the share or  
 10 shares to which each is entitled from the estate and signed  
 11 (1) in the case of an estate having a sole beneficiary, by such  
 12 sole beneficiary or (2) in the case of multiple beneficiaries,  
 13 every beneficiary.



14 In the case of a beneficiary under a disability, the duly  
15 qualified personal representative of such beneficiary, may  
16 sign in lieu of such beneficiary. A personal representative  
17 signing such waiver shall be responsible to his or her cestui  
18 que trust for any loss resulting from such waiver.

19 The waiver shall be recorded as in the case of and in lieu of  
20 a settlement.

**ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE  
OF CLAIMS AGAINST ESTATES OF DECEDENTS;  
COUNTY OPTION.**

§44-3A-1. Election to make article applicable.

§44-3A-4a. Short form settlement.

§44-3A-43. County fiduciary fund.

**§44-3A-1. Election to make article applicable.**

1 (a) Any county commission which has not heretofore  
2 elected to proceed under provisions of this article may do so  
3 in accord with this section.

4 (b) If at any time the county commission, by order  
5 entered of record, makes a preliminary determination to  
6 proceed under the provisions of this article, it shall in such  
7 order fix a time for public hearing not less than thirty nor  
8 more than forty-five days after the entry of such order and  
9 cause to be published as a Class II-O legal advertisement, as  
10 provided in section two, article three, chapter fifty-nine of  
11 the code, setting forth the reasons for the hearing, its date,  
12 place and time, and the fact that the county commission has  
13 made a preliminary determination to proceed under this  
14 article. The notice shall also recite that within fifteen days  
15 after the public hearing the court, after consideration of the  
16 following factors, will make a final determination whether  
17 to proceed under this article:

18 (1) The relatively expeditious and efficient  
19 administration and settlement of estates;

20 (2) The relative cost and convenience to the public and  
21 to the estates;

22 (3) Whether the fees provided under this article would  
23 be insufficient to fund the salary and expenses of a

24 fiduciary supervisor as described in this article of this  
25 chapter;

26 (4) Whether the county commission and the public  
27 interest is served by the availability of the unsupervised  
28 administration of estates having sole beneficiaries based  
29 upon the local needs of the county;

30 (5) The availability of physical facilities necessary for  
31 the administration of this article.

32 (c) At the hearing the county commission shall receive  
33 both written and oral comment from any citizen upon the  
34 desirability of proceeding under the provisions of this  
35 article. It may limit the time for oral presentations and  
36 permit additional written presentations to be filed up to  
37 three days after the hearing.

38 (d) Within sixty days of the entry of its preliminary  
39 determination order, the court shall enter an order either  
40 withdrawing its preliminary determination or finally  
41 confirming such determination, which order confirming  
42 shall be effective the first day of the next month which is  
43 more than twenty days next following entry of such order,  
44 and shall order that the provisions of this article are  
45 thereafter applicable to proceedings held in such county.

46 (e) The county commission shall make such orders for  
47 the closing of estates opened prior to the effective date of  
48 the order confirming the commission's determination that  
49 the provisions of this article be applicable to proceedings in  
50 the county as it may deem expedient which are not  
51 inconsistent with the express provisions of this chapter.

#### **§44-3A-4a. Short form settlement.**

1 In all estates of decedents administered under the  
2 provisions of this article where an inheritance tax release  
3 has been filed with the clerk and more than one hundred  
4 twenty days has elapsed since the filing of any notice  
5 required by section four, an estate may be closed by a short  
6 form settlement filed in compliance with this section.

7 The fiduciary may file with the fiduciary supervisor a  
8 proposed short form settlement which shall contain an

9 affidavit made by the fiduciary that the time for filing  
10 claims has expired, that no known and unpaid claims exist  
11 against the estate and showing the allocation to which each  
12 distributee and beneficiary is entitled in the distribution of  
13 the estate and contain a representation that the property to  
14 which each distributee or beneficiary is entitled has been or  
15 upon approval of the settlement will be delivered thereto, or  
16 that each distributee and beneficiary has agreed to a  
17 different allocation. The application shall contain a waiver  
18 signed by each distributee and beneficiary.

19 Such waiver may be signed in the case of a distributee or  
20 beneficiary under a disability by the duly qualified  
21 personal representative of such distributee or beneficiary.  
22 A personal representative signing such waiver shall be  
23 responsible to his or her cestui que trust for any loss  
24 resulting from such waiver.

25 The fiduciary supervisor shall examine the affidavit and  
26 waiver and determine that the allocation to the distributees  
27 and beneficiaries set forth in the affidavit is correct and all  
28 proper parties signed the waiver, both shall be recorded as  
29 in the case of and in lieu of settlement. If the fiduciary  
30 supervisor identifies any error the fiduciary supervisor  
31 shall within five days of the filing of such settlement give  
32 the fiduciary notice as in the case of any other incorrect  
33 settlement.

34 If the short form settlement is proper the fiduciary  
35 supervisor shall proceed as in the case of any other  
36 settlement.

#### **§44-3A-43. County fiduciary fund.**

1 (a) The county commission, or tribunal in lieu thereof,  
2 shall create a special county fund pursuant to the provisions  
3 of section nine, article one, chapter seven of this code called  
4 the "County Fiduciary Fund." All moneys received by the  
5 fiduciary supervisor shall be deposited in said fund and the  
6 county commission or tribunal shall pay from said fund all  
7 salaries and expenses of the fiduciary supervisor and all  
8 other expenses associated with the probate system,  
9 exclusive of the fees of fiduciary commissioners or special  
10 fiduciary commissioners and exclusive of recording fees

11 which shall be collected by the fiduciary supervisor and  
12 paid to the clerk of the county commission. The said  
13 commission or tribunal is authorized to transfer any other  
14 county funds as may be available to said "County Fiduciary  
15 Fund."

16 (b) Whenever the fiduciary supervisor finds that the  
17 funds appropriated and personnel, facilities or equipment  
18 allotted to his or her office are insufficient to permit the full  
19 and timely performance of the duties of the office, the  
20 supervisor shall make application to the commission for  
21 additional appropriations from the fund: *Provided*, That if  
22 any such application has been made within the prior six  
23 months then the fiduciary supervisor need not make such  
24 additional application until at least six months shall have  
25 elapsed. The commission may, and if no such application  
26 has been previously made for at least six months shall, care-  
27 fully review such application and subject to all other provi-  
28 sions of law for revisions of appropriations during a fiscal  
29 year, and may make available such additional funds,  
30 personnel, facilities and equipment as it deems appropriate  
31 for all or any of the purposes claimed to be needed by the fidu-  
32 ciary supervision upon such application. If it refuses to  
33 appropriate additional and unexpended funds in the  
34 fiduciary fund for use in the full and timely compliance by  
35 the fiduciary supervisor with the provisions of this article,  
36 then it shall by order state its reasons for refusing so to do.  
37 The fiduciary supervisor may apply to the circuit court of  
38 the county by application for writ of mandamus for a review  
39 of the order of the commission and the circuit court shall  
40 have jurisdiction to order the commission to appropriate  
41 such unexpended funds as may be suitable to assist the  
42 fiduciary supervisor in achieving full and timely  
43 compliance with the provisions of this article.

44 (c) Every county commission or tribunal in lieu thereof,  
45 which shall adopt and use the procedure set forth in this  
46 article, shall report to the legislature on or before the first  
47 day of the regular session thereof held in the following year,  
48 and on the first day of every regular session held in the next  
49 succeeding three years thereafter, as to the moneys received  
50 into or spent from the county fiduciary fund of the county to  
51 the date of such report, and of all moneys transferred into

52 said fund and spent from it or by such county commission  
53 for probate matters or other matters relating to the  
54 administration of estates and any applications made to it  
55 for additional funds pursuant to subsection (b) of this  
56 section. The tax commissioner shall prescribe by  
57 procedural rule the form and content of such report which  
58 shall be in sufficient detail so as to permit the identification  
59 of the activity or activities generating the income of such  
60 fund and to identify by function and purpose all  
61 expenditures with sufficient detail to enable the  
62 Legislature to determine the extent to which the probate  
63 system and other estate matters are functioning in an  
64 efficient and economical manner and the fiscal implications  
65 thereof. Such reports shall be filed by each such county  
66 commission or tribunal in lieu thereof with the tax  
67 commissioner no later than ten days prior to the first day of  
68 each said session of the Legislature and the tax  
69 commissioner shall thereafter properly collate and file such  
70 reports with the clerk of each house of the Legislature on or  
71 before the first day of each such regular session.

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## CHAPTER 78

(S. B. 402—By Senator Boettner)

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[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section six, article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the establishment of common trust funds; investments; trust funds of banks or trust companies owned or controlled by a bank holding company.

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

That section six, article six, 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 6. INVESTMENTS BY FIDUCIARIES.****§44-6-6. Establishment of common trust funds; investments.**

1 (a) Any bank or trust company qualified to act as  
2 fiduciary in this state may establish common trust funds  
3 for the purpose of furnishing, or making available, invest-  
4 ments to itself as fiduciary, or to itself and others, as co-  
5 fiduciaries, and may, as such fiduciary or cofiduciary, in-  
6 vest funds which it lawfully holds for investment in inter-  
7 ests in such common trust funds, if such investment is not  
8 prohibited by the instrument, judgment, decree or order  
9 creating its fiduciary status or relationship, and if, in the  
10 case of cofiduciaries, the bank or trust company procures  
11 the consent of its cofiduciaries to such investment: *Pro-*  
12 *vided*, That unless such fiduciary acquiring or holding any  
13 interest in any common trust fund is specifically permit-  
14 ted by the instrument, judgment, decree or order creating  
15 the fiduciary status or relationship to invest in securities  
16 other than those described in section two of this article,  
17 or any amendments or reenactments thereof, such common  
18 trust funds shall be invested only in those securities de-  
19 scribed in said section two and subject to the limitations  
20 and conditions of said section, and any amendments or  
21 reenactments thereof, except that a common trust fund  
22 or funds may be established for the purchase of securities  
23 of the type described in said section two without regard  
24 to the percentage limitation specified in subparagraph  
25 (1), subdivision (h) of said section two, in which event  
26 the funds invested by a fiduciary in interests in such last  
27 mentioned common trust fund or funds shall not exceed  
28 the percentage limitation specified in said subparagraph  
29 (1) of subdivision (h) unless a larger investment is per-  
30 mitted by the instrument, judgment, decree or order  
31 creating the fiduciary status or relationship.

32 (b) Any bank or trust company qualified to act as a  
33 fiduciary in this state may establish and maintain com-  
34 mon trust funds for the collective investment of funds  
35 held in any fiduciary capacity by it or by any bank or  
36 trust company qualified to act as fiduciary in this state  
37 which is owned or controlled by a bank holding company

38 which owns or controls such establishing bank or trust  
39 company. Any such commonly owned or controlled bank  
40 or trust company may, as fiduciary or cofiduciary with  
41 others, invest funds which it holds in common trust funds  
42 so established and maintained. The restrictions contained  
43 in subsection (a) of this section shall apply to the estab-  
44 lishment, maintenance and investment of common trust  
45 funds under this subsection.

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## CHAPTER 79

(Com. Sub. for H. B. 1037—By Delegate Kidd and Delegate Shanholtz)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twelve, article three of said chapter five-a, relating to nonprofit workshops and purchase of products of such workshops by the state; and employment of persons to identify, evaluate, coordinate and make contracts for such products.

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

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

**Article**

1. Department of Finance and Administration.
3. Purchasing Division.

**ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.**

**§5A-1-1. Definitions.**

- 1 For the purpose of this chapter:
- 2 "Commissioner" means the commissioner of finance and
- 3 administration and, as used in article two of this chapter, the
- 4 director of the budget.

5 "Director" means the director of the division referred to in  
6 the heading of the article in which the word appears.

7 "Spending unit" means a department, agency or institution  
8 of the state government for which an appropriation is request-  
9 ed, or to which an appropriation is made by the Legislature.

10 "Spending officer" means the executive head of a spending  
11 unit, or a person designated by him.

12 "Commodities" means supplies, material, equipment, con-  
13 tractual services, and any other articles or things used by or  
14 furnished to a department, agency or institution of the state  
15 government.

16 "Contractual services" shall include telephone, telegraph,  
17 electric light and power, water and similar services.

18 "Printing" means printing, binding, ruling, lithographing,  
19 engraving and other similar services.

20 "Expendable commodities" means those commodities which,  
21 when used in the ordinary course of business, will become  
22 consumed or of no market value within the period of one year  
23 or less.

24 "Removable property" means any personal property not  
25 permanently affixed to or forming a part of real estate.

26 "Nonprofit workshops" means an establishment (a) where  
27 any manufacture or handiwork is carried on, (b) which  
28 is operated either by a public agency or by a cooperative or  
29 by a nonprofit private corporation or nonprofit association,  
30 in which no part of the net earnings thereof inures, or may  
31 lawfully inure, to the benefit of any private shareholder or  
32 individual, (c) which is operated for the primary purpose  
33 of providing remunerative employment to blind or severely  
34 disabled persons who cannot be absorbed into the competitive  
35 labor market, and (d) which shall be approved, as evidenced  
36 by a certificate of approval, by the state board of vocational  
37 education, division of vocational rehabilitation.



**ARTICLE 3. PURCHASING DIVISION.****§5A-3-12. Publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops.**

1 The director shall solicit sealed bids for the purchase of  
2 commodities and printing which is estimated to exceed five  
3 thousand dollars. No spending unit shall issue a series of requi-  
4 sitions which would circumvent this five thousand dollar  
5 maximum. Bids shall be obtained by public notice published  
6 as a Class II legal advertisement in compliance with the pro-  
7 visions of article three, chapter fifty-nine of this code, and the  
8 publication area for such publication shall be the county  
9 where the department or agency making the requisition is  
10 located. Such notice shall be so published within the four-  
11 teen days next preceding the final date of submitting bids. The  
12 notice may also be published by any other advertising medium  
13 the director may deem advisable. The director may also solicit  
14 sealed bids by sending requests by mail to prospective suppliers  
15 and by posting notice on a bulletin board in his office: *Pro-*  
16 *vided*, That the director shall, without competitive bidding,  
17 purchase commodities and printing produced and offered for  
18 sale by nonprofit workshops, as defined in section one, article  
19 one of this chapter, which are located in this state: *Provided*,  
20 *however*, That such commodities and printing shall be of a  
21 price and quality comparable to other commodities and  
22 printing otherwise available.

23 Toward the end of effecting the making of contracts for  
24 commodities and printing of nonprofit workshops, the director  
25 shall employ a person whose primary responsibility shall be  
26 to identify all commodities and printing available for purchase  
27 from such nonprofit workshops, to evaluate the need of the  
28 state for such commodities and printing to coordinate the  
29 various nonprofit workshops in their production efforts and  
30 to make available to such workshops information about avail-  
31 able opportunities within state government for purchase of  
32 commodities or printing which might be produced and sold  
33 by such workshops. Funds to employ such a person shall be  
34 included annually in the budget.

## CHAPTER 80

(Com. Sub. for H. B. 1340—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section eight, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the salary of the state fire administrator.

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

That section eight, article three, 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 3. FIRE PREVENTION AND CONTROL ACT.

#### §29-3-8. Office of state fire administrator created; appointment; term of office; removal; compensation; employees; equipment.

1 (a) There is hereby created a state fire administrator who  
2 shall be appointed by the governor from a list of names sub-  
3 mitted by the state fire commission.

4 (b) The state fire administrator shall serve at the will and  
5 pleasure of the governor.

6 (c) The annual salary of the state fire administrator shall  
7 be twenty thousand dollars. On and after the first day of  
8 July, one thousand nine hundred eighty-four, the salary of  
9 the state fire administrator shall be twenty-four thousand  
10 dollars annually. He may employ such technical, clerical,  
11 stenographic and other personnel and fix their compensation,  
12 and may incur such expenses as may be necessary in the  
13 performance of the duties of his office within the appropria-  
14 tion therefor. Employees of the state fire administrator's office  
15 shall be members of the state civil service system, and all  
16 appointments of the office shall be a part of the classified  
17 service under the civil service system.

18 (d) The state fire administrator and other personnel of

19 the state fire administrator's office shall be provided with  
20 appropriate office space, furniture, equipment, supplies, sta-  
21 tionery and printing in the same manner as provided for other  
22 state agencies.

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## CHAPTER 81

(Com. Sub. for S. B. 128—By Senator Holliday)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the state fire marshal, any full-time deputy fire marshal, any full-time assistant fire marshal and certain persons deputized by the state fire marshal for the purpose of making inspections, to issue citations for violations of fire and life safety regulations; limiting the deputization of members of volunteer fire departments to the chief and his designated assistant; semiannual reports of citations issued by certain persons; revocation of authority to issue citations; requiring completion of a law-enforcement training course and evidence of liability coverage before authorization of certain persons to issue a citation; and providing criminal penalties for violations.

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

That section twelve, article three, 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 3. FIRE PREVENTION AND CONTROL ACT.

#### §29-3-12. Powers and duties of state fire marshal.

- 1 (a) *Enforcement of laws.*—The state fire marshal shall
- 2 enforce all laws of the state having to do with:
  - 3 (1) Prevention of fire.
  - 4 (2) The storage, sale and use of any explosive,

5 combustible or other dangerous article in solid, flammable  
6 liquid or gas form.

7 (3) The installation and maintenance of equipment of  
8 all sorts intended to extinguish, detect and control fires.

9 (4) The means and adequacy of exit, in case of fire, from  
10 buildings and all other places in which persons work, live or  
11 congregate from time to time for any purpose, except  
12 buildings used wholly as dwelling houses for no more than  
13 two families.

14 (5) The suppression of arson.

15 (b) *Assistance upon request.*—Upon request, the state  
16 fire marshal shall immediately assist any chief of any  
17 recognized fire company or department.

18 (c) *Enforcement of regulations.*—The state fire marshal  
19 shall enforce the regulations promulgated by the state fire  
20 commission as authorized by section three of this article.

21 (d) *Inspections generally.*—The state fire marshal shall  
22 inspect all state, county and municipally owned  
23 institutions, all public and private schools, theaters,  
24 churches and other places of public assembly as to fire exits  
25 and reasonable safety standards and report his findings and  
26 recommendations to the proper administrative heads.

27 (e) *Right of entry.*—The state fire marshal may at all  
28 reasonable hours enter any building or premises, other than  
29 dwelling houses, for the purpose of making an inspection,  
30 which he may deem necessary to be made under the  
31 provisions of this article.

32 (f) *Investigations.*—The state fire marshal may at any  
33 time investigate as to the origin or circumstances of any fire  
34 or explosion or attempt to cause fire or explosion occurring  
35 in the state. The state fire marshal shall have the authority  
36 at all times of the day or night, in performance of the duties  
37 imposed by the provisions of this article, to investigate  
38 where any fires or attempt to cause fires shall have  
39 occurred, or which at the time may be burning.  
40 Notwithstanding the above provisions of this subsection,  
41 prior to entering any building or premises for the purposes

42 of such investigation, the state fire marshal shall obtain a  
43 proper search warrant: *Provided*, That the same shall not be  
44 necessary where there is permissive waiver or the state fire  
45 marshal is an invitee of the individual having legal custody  
46 and control of the property, building or premises to be  
47 searched.

48 (g) *Testimony*.—The state fire marshal, in making an  
49 inspection or investigation, when in his judgment such  
50 proceedings are necessary, may take the statements or  
51 testimony under oath of all persons who may be cognizant  
52 of any facts or have any knowledge about the matter to be  
53 examined and inquired into, and may have the statements  
54 or testimony reduced to writing; and shall transmit a copy  
55 of such statements or testimony so taken to the prosecuting  
56 attorney for the county wherein the fire or explosion or  
57 attempt to cause a fire or explosion occurred.  
58 Notwithstanding the above, no person shall be compelled to  
59 testify or give any such statement under this subsection.

60 (h) *Arrests; warrants; penalty*.—When in their  
61 judgment such examination as described in subsection (g)  
62 of this section discloses that the fire or explosion or attempt  
63 to cause a fire or explosion was of incendiary origin, the  
64 state fire marshal, any full-time deputy fire marshal or any  
65 full-time assistant fire marshal are hereby authorized and  
66 empowered:

67 (1) To arrest the supposed incendiary anywhere within  
68 the confines of the state of West Virginia, or have him  
69 arrested, for any violation of the provisions of this article or  
70 of the arson-related offenses of article three, chapter sixty-  
71 one of this code: *Provided*, That any and all persons so  
72 arrested shall be forthwith brought before the magistrate or  
73 circuit court.

74 (2) To make complaint in writing before any court or  
75 officer having jurisdiction and obtain, serve and execute an  
76 arrest warrant when knowing or having reason to believe  
77 that anyone has committed an offense under any provision  
78 of this article or of the arson-related offenses of article  
79 three, chapter sixty-one of this code. Proper return shall be  
80 made on all arrest warrants before the tribunal having  
81 jurisdiction over such violation.

82 (3) To make complaint in writing before any court or  
83 officer having jurisdiction and obtain, serve and execute a  
84 warrant for the search of any premises that may possess  
85 evidence or unlawful contraband relating to violations of  
86 this article or of the arson-related offenses of article three,  
87 chapter sixty-one of this code. Proper return shall be made  
88 on all search warrants before the tribunal having  
89 jurisdiction over such violation.

90 (i) *Witnesses and oaths.*—The state fire marshal is  
91 empowered and authorized to issue subpoenas and  
92 subpoenas duces tecum to compel the attendance of persons  
93 before him to testify in relation to any matter which is, by  
94 the provision of this article, a subject of inquiry and  
95 investigation by the state fire marshal and cause to be  
96 produced before him such papers as he may require in  
97 making such examination. The state fire marshal is hereby  
98 authorized to administer oaths and affirmations to persons  
99 appearing as witnesses before him. False swearing in any  
100 matter or proceeding aforesaid shall be deemed perjury and  
101 shall be punishable as such.

102 (j) *Deputizing members of fire departments in this*  
103 *state.*—The state fire marshal may deputize a member of  
104 any fire department, duly organized and operating in this  
105 state, who is approved by the chief of his department and  
106 who is properly qualified, to act as his assistant for the  
107 purpose of making inspections with the consent of the  
108 property owner or the person in control of such property  
109 and such investigations as may be directed by the state fire  
110 marshal, and the carrying out of such orders as may be  
111 prescribed by him, to enforce and make effective the  
112 provisions of this article and any and all regulations  
113 promulgated by the state fire commission under authority  
114 of this article: *Provided*, That in the case of a volunteer fire  
115 department, only the chief thereof or his single designated  
116 assistant may be so deputized.

117 (k) *Written report of examinations.*—The state fire  
118 marshal shall, at the request of the county commission of  
119 any county or the municipal authorities of any incorporated  
120 municipality in this state, make to them a written report of  
121 the examination made by him regarding any fire happening  
122 within their respective jurisdictions.

123 (l) *Report of losses by insurance companies.*—It shall be  
124 the duty of each fire insurance company or association  
125 doing business in this state, within ten days after the  
126 adjustment of any loss sustained by it that exceeds fifteen  
127 hundred dollars, to report to the state fire marshal, upon  
128 forms furnished by him, such information regarding the  
129 amount of insurance, the value of the property insured and  
130 the amount of claim as adjusted, as in the judgment of the  
131 state fire marshal it is necessary for him to know. This  
132 report is in addition to any such information required by the  
133 state insurance commissioner. Upon the request of the  
134 owner or insurer of any property destroyed or injured by  
135 fire or explosion, or in which an attempt to cause a fire or  
136 explosion may have occurred, the state fire marshal shall  
137 make a written report to the person requesting the same of  
138 the result of the examination made by him regarding the  
139 property.

140 (m) *Issuance of permits and licenses.*—The state fire  
141 marshal is authorized to issue permits and licenses as  
142 required in this article.

143 (n) *Issuance of citations for fire and life safety*  
144 *violations.*—The state fire marshal, any full-time deputy  
145 fire marshal and any full-time assistant fire marshal are  
146 hereby authorized, and any person deputized pursuant to  
147 subsection (j) of this section who is approved by the chief of  
148 his department and who is properly qualified, may be  
149 authorized by the state fire marshal, to issue citations, in  
150 their respective jurisdictions, for fire and life safety  
151 violations of the state fire code and as provided for by the  
152 rules and regulations promulgated by the state fire  
153 commission in accordance with article three, chapter  
154 twenty-nine-a of this code: *Provided*, That a summary  
155 report of all citations issued pursuant to this section by  
156 persons deputized under subsection (j) of this section shall  
157 be forwarded semiannually to the state fire marshal in such  
158 form and containing such information as he may by  
159 regulation require, including the violation for which the  
160 citation was issued, the date of issuance, the name of the  
161 person issuing the citation and the person to whom the  
162 citation was issued. The state fire marshal may at any time  
163 revoke the authorization of a person deputized pursuant to

164 subsection (j) of this section to issue citations, if in the  
165 opinion of the state fire marshal, the exercise of such  
166 authority by such person is inappropriate.

167 Violations for which citations may be issued include, but  
168 are not limited to:

169 (1) Overcrowding places of public assembly;

170 (2) Locked or blocked exits in public areas;

171 (3) Failure to abate a fire hazard;

172 (4) Blocking of fire lanes or fire department connections;  
173 and

174 (5) Tampering with, or rendering inoperable except  
175 during necessary maintenance or repairs, on-premise  
176 firefighting equipment, fire detection equipment and fire  
177 alarm systems.

178 No person deputized pursuant to subsection (j) of this  
179 section may be authorized to issue a citation unless that  
180 person has satisfactorily completed a law-enforcement  
181 officer training course designed specifically for fire  
182 marshals. The course shall be approved by the law-  
183 enforcement training subcommittee of the governor's  
184 committee on criminal justice and highway safety and the  
185 state fire commission. In addition, no person deputized  
186 pursuant to subsection (j) of this section may be authorized  
187 to issue a citation until evidence of liability coverage of such  
188 person has been provided, in the case of a paid municipal  
189 fire department by the municipality wherein the fire  
190 department is located, or in the case of a volunteer fire  
191 department, by the county commission of the county  
192 wherein the fire department is located or by the  
193 municipality served by such volunteer fire department, and  
194 that evidence of liability coverage has been filed with the  
195 state fire marshal.

196 (o) *Penalties for violations.*—Any person who violates  
197 any fire and life safety regulation of the state fire code shall  
198 be guilty of a misdemeanor, and, upon conviction thereof,  
199 shall be fined not more than one hundred dollars or



200 imprisoned in the county jail not more than ninety days, or  
201 both fined and imprisoned.

202 Each and every day during which any illegal erection,  
203 construction, reconstruction, alteration, maintenance or  
204 use continues after knowledge or official notice that same is  
205 illegal, shall be deemed a separate offense.

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## CHAPTER 82

(Com. Sub. for S. B. 27—By Mr. McGraw, Mr. President)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen-a, relating to requiring smoke detectors in one- and two-family dwellings; specifying requirements for installation, operation, maintenance and use of such smoke detectors; authorizing installation of certain fire sprinkler systems in lieu of smoke detectors; mandating local authorities investigating fires to issue smoke detector installation orders; specifying a criminal penalty; effect of violation on civil actions or proceedings; effect on other laws; date for compliance.

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

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

### ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

#### §29-3-16a. Smoke detectors in one- and two-family dwellings; penalty.

- 1 (a) Within all one- and two-family dwellings, includ-
- 2 ing mobile homes used for residential occupancy, which
- 3 are not occupied by the owner thereof, a smoke detector

4 shall be installed outside of each separate sleeping area  
5 in the immediate vicinity of the sleeping area. The  
6 smoke detector shall be capable of sensing visible or  
7 invisible particles of combustion. Such smoke detector  
8 shall meet the specifications and be installed as provided  
9 for in the National Fire Protection Association Standard  
10 74, "Standard for the Installation, Maintenance and Use of  
11 Household Fire Warning Equipment," 1980 edition, and  
12 the manufacturer's specifications. When activated, the  
13 smoke detector shall provide an alarm suitable to warn  
14 the occupants of the danger of fire.

15 (b) The owner of each dwelling described in subsection  
16 (a) of this section shall provide, install and replace the  
17 smoke detectors required by this section; in each dwell-  
18 ing described in subsection (a) which is not occupied by  
19 the owner thereof, the tenant in any such dwelling shall  
20 perform routine maintenance on the smoke detectors  
21 within such dwelling.

22 (c) Where a dwelling is not occupied by the owner and  
23 is occupied by an individual who is deaf or hearing im-  
24 paired, the owner shall, upon written request by or on  
25 behalf of such individual, provide and install a smoke  
26 detector with a light signal sufficient to warn the deaf  
27 or hearing-impaired individual of the danger of fire.

28 (d) An automatic fire sprinkler system installed in  
29 accordance with the National Fire Protection Association  
30 Standard 13D, "Standard for the Installation of Sprinkler  
31 Systems in Residential Occupancies," 1983 edition, may be  
32 provided in lieu of smoke detectors.

33 (e) After investigating a fire in any dwelling described  
34 in subsection (a) of this section, the local investigating  
35 authority shall issue to the owner a smoke detector in-  
36 stallation order in the absence of the required smoke  
37 detectors.

38 (f) Any person who violates any provision of this  
39 section is guilty of a misdemeanor, and, upon conviction  
40 thereof, shall be fined not less than ten dollars nor more  
41 than twenty dollars.

42 (g) A violation of this section shall not be deemed by  
43 virtue of such violation to constitute evidence of negli-  
44 gence or contributory negligence or comparative negli-  
45 gence in any civil action or proceeding for damages.

46 (h) A violation of this section shall not constitute a  
47 defense in any civil action or proceeding involving any  
48 insurance policy.

49 (i) Nothing in this section shall be construed to limit  
50 the rights of any political subdivision in this state to  
51 enact laws imposing upon owners a greater duty with  
52 regard to the installation, repair and replacement of  
53 smoke detectors than is required by this section.

54 (j) Owners of dwellings described in subsection (a)  
55 shall comply with the provisions of this section no later  
56 than the first day of July, one thousand nine hundred  
57 eighty-five.

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## CHAPTER 83

(H. B. 1206—By Delegate Knight and Delegate McKinley)

[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen-d, relating to continuing and reestablishing the United States geological survey program within the department of natural resources.

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

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

**ARTICLE 1. ORGANIZATION AND ADMINISTRATION.****§20-1-18d. United States geological survey continued and re-established.**

1 After having conducted a performance and fiscal audit  
2 through its joint committee on government operations, pur-  
3 suant to section nine, article ten, chapter four of this code,  
4 the Legislature hereby finds and declares that the United  
5 States geological survey program within the department of  
6 natural resources should be continued and reestablished.  
7 Accordingly, notwithstanding the provisions of section four,  
8 article ten, chapter four of this code, the United States geologi-  
9 cal survey program within the department of natural resources  
10 shall continue to exist until the first day of July, one thousand  
11 nine hundred ninety.

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**CHAPTER 84**

(S. B. 743—By Senator Chace, et al.)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-g, relating generally to the creation and administration of a hazardous waste emergency response fund; legislative findings and declarations related thereto; definitions of certain terms; designated revenues to be deposited in such fund; assessment of certain fees on generators of hazardous waste; exclusion of certain wastes from such assessments; maximum revenue to be collected from certain fees; interest and surcharge to be imposed on unpaid fees; fee schedules to be established by the director; notice of fee schedules to generators by certified mail; expenditures from the fund by the director for certain purposes; promulgation of certain rules and regulations by director; civil actions to recover certain expenditures from the fund and venue for such actions; civil actions to recover unpaid fees

and venue for such actions; assistance from attorney general or prosecuting attorney in civil actions brought by the director; authorization to enter into agreements with federal government; authorization to accept donations to the fund and to invest the fund; the state hazardous waste contingency plan; and promulgation of rules and regulations by the director relating to such contingency plan.

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

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

**ARTICLE 5G. HAZARDOUS WASTE EMERGENCY RESPONSE FUND.**

- §20-5G-1. Findings; purpose.
- §20-5G-2. Definitions.
- §20-5G-2. Creation of hazardous waste emergency response fund; components of fund.
- §20-5G-4. Fee assessments; tonnage fees; due dates of payments; interest on unpaid fees.
- §20-5G-5. Director's responsibilities; fee schedules; authorized expenditures; other powers of director; authorized civil actions; assistance of attorney general or prosecuting attorney.
- §20-5G-6. State hazardous waste contingency plan.

**§20-5G-1. Findings; purpose.**

1 The Legislature recognizes that large quantities of  
2 hazardous waste are generated within the state, and that  
3 emergency situations involving hazardous waste can and  
4 will arise which may present a hazard to human health,  
5 safety or the environment. The Legislature also recognizes  
6 that some hazardous waste has been stored, treated or  
7 disposed of at sites in the state in a manner insufficient to  
8 protect human health, safety or the environment. The  
9 Legislature further recognizes that the federal govern-  
10 ment has enacted the Comprehensive Environmental  
11 Response, Compensation and Liability Act of 1980, which  
12 provides for federal assistance to respond to hazardous  
13 substance emergencies and to remove and remedy the  
14 threat of damage to the public health or welfare or to

15 the environment, and declares that West Virginia desires  
16 to produce revenue for matching the federal assistance  
17 provided under the federal act. Therefore, the Legislature  
18 hereby creates a hazardous waste emergency fund to pro-  
19 vide state funds for responding to hazardous waste emer-  
20 gencies, matching federal financial assistance for restoring  
21 hazardous waste sites and other costs or expenses in-  
22 curred in the administration of this article.

**§20-5G-2. Definitions.**

1 As used in this article, unless the context clearly re-  
2 quires a different meaning:

3 (1) "Generator" means any person, corporation, part-  
4 nership, association or other legal entity, by site location,  
5 whose act or process produces hazardous waste as identi-  
6 fied or listed by the director in regulations promulgated  
7 pursuant to section six of such article, in an amount  
8 greater than twelve thousand kilograms per year;

9 (2) "Cleanup" means such actions as may be necessary  
10 to monitor, assess and evaluate the threat of release of  
11 hazardous waste, the containment, collection, control,  
12 identification, treatment, dispersal, removal or disposal  
13 of hazardous waste or other such actions as may be  
14 necessary to respond to hazardous waste emergencies or  
15 to prevent, minimize or mitigate damage to the public  
16 health, safety, welfare or to the environment, and in-  
17 cludes, where necessary, replacement of existing, or pro-  
18 vision of alternative, drinking water supplies that have  
19 been contaminated with hazardous waste as a result of an  
20 emergency;

21 (3) "Cleanup costs" shall mean all costs incurred by  
22 the director, or with the approval of the director, by any  
23 state agency or person participating in the cleanup of a  
24 hazardous waste emergency or remedial action;

25 All other terms shall have the meaning as prescribed  
26 in the regulations promulgated by the director pursuant  
27 to the provisions of section six, article five-e of this chap-  
28 ter.

**§20-5G-3. Creation of hazardous waste emergency response fund; components of fund.**

1 (a) A special fund designated "The Hazardous Waste  
2 Emergency Response Fund," hereinafter referred to as  
3 "the fund," shall be established in the state treasury on  
4 the first day of July, one thousand nine hundred eighty-  
5 four.

6 (b) All generator fee assessments, any interest or  
7 surcharge assessed and collected by the director, interest  
8 accruing on investments and deposits of the fund, and  
9 any other moneys designated shall be paid into the fund.

**§20-5G-4. Fee assessments; tonnage fees; due dates of payments; interest on unpaid fees.**

1 (a) Each generator of hazardous waste within this state  
2 shall pay a fee based upon the amount of hazardous waste  
3 generated as reported to the director in the generator's  
4 most recent annual report submitted pursuant to article  
5 five-e of this chapter. The director shall establish a fee  
6 schedule according to the following: Full assessment for  
7 generated hazardous waste disposed or treated off-site;  
8 ninety percent of the full assessment for generated haz-  
9 ardous waste either treated or disposed on-site; seventy-  
10 five percent of the full assessment for generated hazard-  
11 ous waste treated off-site so that such waste is rendered  
12 nonhazardous; and twenty-five percent of the full assess-  
13 ment for generated hazardous waste treated on-site so  
14 that such waste is rendered nonhazardous: *Provided*,  
15 That the generator fee assessment shall not apply to the  
16 following: (1) Those wastes listed in paragraph (A),  
17 subdivision two, subsection (a) section six, article five-e  
18 of this chapter on the effective date of this article; (2)  
19 sludge from any publicly owned treatment works in the  
20 state; (3) any discharge to waters of the state of hazard-  
21 ous waste pursuant to a valid water pollution control  
22 permit issued under federal or state law; (4) any hazard-  
23 ous wastes beneficially used or reused or legitimately  
24 recycled or reclaimed; (5) hazardous wastes which are  
25 created or retrieved pursuant to an emergency or reme-  
26 dial action plan; (6) hazardous wastes whose sole charac-

27 teristic as a hazardous waste is based on corrosivity and  
28 which are subjected to on-site elementary neutralization  
29 in containers or tanks.

30 (b) Each generator of hazardous waste within the state  
31 subject to a fee assessment under subsection (a) of this  
32 section shall pay a fee based on its annual tonnage of  
33 generated hazardous waste. For calendar year one thou-  
34 sand nine hundred eighty-five, the total fees assessed  
35 shall be sufficient to produce revenue of five hundred  
36 thousand dollars. At the end of each fiscal year, any un-  
37 expended balance of such collected fees shall not be  
38 transferred to the general revenue fund, but shall remain  
39 in the fund. For subsequent years, the director shall vary  
40 the fees annually to a level necessary to produce a fund  
41 of at least one million dollars at the beginning of each  
42 calendar year, but in no event shall the fees established  
43 be set to produce revenue exceeding five hundred thou-  
44 sand dollars in any year. When the fund's unobligated  
45 balance exceeds one million five hundred thousand dollars  
46 at the end of the calendar year, generator assessments  
47 under this article shall cease until such time as the fund's  
48 unobligated balance at the end of any year is less than  
49 one million dollars.

50 (c) Generator fee assessments shall be due and payable  
51 to the department of natural resources on the fifteenth  
52 day of January, one thousand nine hundred eighty-five,  
53 and each succeeding year thereafter. Such payments shall  
54 be accompanied by information in such form as the direc-  
55 tor may prescribe.

56 (d) If the fees or any portion thereof are not paid by  
57 the date prescribed, interest shall accrue upon the unpaid  
58 amount at the rate of ten percent per annum from the  
59 date due until payment is actually made. Such interest  
60 payments shall be deposited in the fund. If any generator  
61 fails to pay the fees imposed before April one of the year  
62 in which they are due, there shall be imposed in addition  
63 to the fee and interest determined to be owed a sur-  
64 charge equivalent to the total amount of the fee which  
65 shall also be collected and deposited in the fund.



**§20-5G-5. Director's responsibilities; fee schedules; authorized expenditures; other powers of director; authorizing civil actions; assistance of attorney general or prosecuting attorney.**

1 (a) The director shall collect all fees assessed pursuant  
2 to this article and administer the fund. The fee schedule  
3 shall be published in the state register by the first day  
4 of August of each year. Each generator who filed an  
5 annual report with the director pursuant to article  
6 five-e of this chapter shall be notified and provided  
7 with a copy of the fee schedule by certified mail. In  
8 the event the fee schedule is not published by the first  
9 day of August, the date prescribed for payment in sec-  
10 tion four of this article shall be advanced by the same  
11 number of days that the publication of the fee sched-  
12 ule is delayed. The interest and surcharge provisions of  
13 section four of this article shall be similarly advanced.

14 (b) The director is authorized to enter into agreements  
15 and contracts and to expend the moneys in the fund for  
16 the following purposes:

17 (1) Responding to hazardous waste emergencies when,  
18 based on readily available information, the director deter-  
19 mines that immediate action may prevent or mitigate  
20 significant risk of harm to human health, safety or the  
21 environment from hazardous wastes in situations for  
22 which no federal funds are immediately available for  
23 such response cleanup or containment: *Provided*, That  
24 the director shall apply for and diligently pursue avail-  
25 able federal funds for such emergencies at the earliest  
26 possible time: *Provided, however*, That funds shall not be  
27 expended under this subsection to clean up or contain  
28 off-site releases of hazardous waste which are classified  
29 as such only as a result of such releases;

30 (2) Reimbursing any person for reasonable clean-up  
31 costs incurred with the authorization of the director in  
32 responding to a hazardous waste emergency pursuant to  
33 authorization of the director;

34 (3) Financing the nonfederal share of the clean-up and

35 site reclamation activities pursuant to the federal Com-  
36 prehensive Environmental Response, Compensation and  
37 Liability Act of 1980, as well as future operation and  
38 maintenance costs for these sites; and

39 (4) Financing any and all preparations necessary for  
40 responding to hazardous waste activities and emergencies  
41 within the state, including, but not limited to, the pur-  
42 chase or lease of hazardous waste emergency response  
43 equipment: *Provided*, That after the fifteenth of January,  
44 one thousand nine hundred eighty-seven, no funds shall  
45 be expended under this subdivision unless the fund is  
46 greater than one million dollars and any expenditure will  
47 not reduce the fund below one million dollars.

48 (c) Prior to making expenditures from the fund pur-  
49 suant to subdivision (1), (2) or (3), subsection (b) of this  
50 section, the director will make reasonable efforts to secure  
51 agreements to pay the costs of cleanup and remedial  
52 actions from owners or operators of sites or other respon-  
53 sible persons.

54 (d) The director is authorized to promulgate and revise  
55 rules and regulations in compliance with chapter twenty-  
56 nine-a of this code to implement and effectuate the  
57 powers, duties and responsibilities vested in him under  
58 this article. Prior to the assessment of any fees under  
59 this article, the director shall promulgate rules or regula-  
60 tions which account for the mixture of hazardous and  
61 nonhazardous constituents in the hazardous waste which  
62 is generated. The director shall not assess a fee on the  
63 nonhazardous portion, including, but not limited to, the  
64 weight of water.

65 (e) The director is authorized to recover through civil  
66 action or cooperative agreements with responsible per-  
67 sons the full amount of any funds expended for purposes  
68 enumerated in subdivision (1), (2) or (3), subsection (b)  
69 of this section. All moneys expended from the fund which  
70 are so recovered shall be deposited in the fund. Any civil  
71 action instituted pursuant to this subsection may be  
72 brought in either Kanawha County or the county in which

73 the hazardous waste emergency occurs or the county in  
74 which remedial action is taken.

75 (f) The director is authorized to institute a civil action  
76 against any generator for failure to pay any fee assessed  
77 pursuant to this article. Any action instituted against a  
78 generator pursuant to this subsection may be brought in  
79 either Kanawha County or the county in which the gener-  
80 ator does business. The generator shall pay all attorney  
81 fees and costs of such action if the director prevails.

82 (g) Upon request by the director, the attorney general  
83 or prosecuting attorney for the county in which an action  
84 was brought shall assist the director in any civil action  
85 instituted pursuant to this section and any proceedings  
86 relating thereto.

87 (h) The director is authorized to enter into contracts  
88 or cooperative agreements with the federal government  
89 to secure to the state the benefits of funding for action  
90 taken pursuant to the requirements of the federal Com-  
91 prehensive Environmental Response, Compensation and  
92 Liability Act of 1980.

93 (i) The director is authorized to accept gifts, donations,  
94 contributions, bequests or devises of money, security or  
95 property for deposit in the fund.

96 (j) The director is authorized to invest the fund to  
97 earn a reasonable rate of return on the unexpended bal-  
98 ance.

#### §20-5G-6. State hazardous waste contingency plan.

1 No later than eighteen months after the effective date  
2 of this article, the director shall promulgate rules or  
3 regulations, in compliance with chapter twenty-nine-a of  
4 this code, establishing a state hazardous waste contin-  
5 gency plan which shall set forth procedures and standards  
6 for responding to hazardous waste emergencies, for con-  
7 ducting remedial cleanup and maintenance of hazardous  
8 waste sites and for making expenditures from the fund  
9 after the date of promulgation of the plan. The plan shall  
10 include:

11 (a) Methods for discovering, reporting and investigat-  
12 ing sites at which hazardous waste may present significant  
13 risk of harm to the public health and safety or to the  
14 environment;

15 (b) Methods and criteria for establishing priority  
16 responses and for determining the appropriate extent of  
17 cleanup, containment and other measures authorized by  
18 this article;

19 (c) Appropriate roles for governmental, interstate and  
20 nongovernmental entities in effectuating the plan;

21 (d) Methods for identifying, procuring, maintaining  
22 and storing hazardous waste response equipment and  
23 supplies; and

24 (e) Methods to identify the most appropriate and cost-  
25 effective emergency and remedial actions in view of the  
26 relative risk or danger presented by each case or event.

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## CHAPTER 85

(S. B. 674—By Mr. McGraw, Mr. President, and Senator Burdette)

[Passed March 7, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to authorizing county, municipal and combined boards of health to retain and make available child safety car seats; to collect reasonable rental and deposit fees for the use of such child safety seats; to conduct public information and educational activities to make the public aware of the need and potential benefits of using such child safety seats; and granting civil and criminal immunity to such boards, their agents and employees making such child safety seats available.

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

That article two, chapter sixteen of the code of West Virginia,

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

**ARTICLE 2. LOCAL HEALTH OFFICERS.**

**§16-2-6. Local boards of health authorized to make available child safety car seats; requirements for renting and loaning such seats; immunity from liability.**

1 (a) Any county, municipal or combined board of health,  
2 whether created and maintained pursuant to the provi-  
3 sions of this article or article two-a of this chapter, shall  
4 be authorized to:

5 (1) Retain and make available child safety car seats;

6 (2) Collect such reasonable rental and security deposit  
7 fees to cover the expenses of retaining and making avail-  
8 able child safety car seats;

9 (3) Conduct public information and education activi-  
10 ties designed to convey the need for and potential benefit  
11 of the use of child safety car seats and prevent misuse  
12 of child safety car seats.

13 (b) Any county, municipal or combined board of health  
14 offering a child safety car seat program pursuant to this  
15 section shall:

16 (1) Thoroughly examine each seat before it is rented  
17 or loaned out and document, in writing, such examina-  
18 tion;

19 (2) Provide written and verbal instructions for proper  
20 use of the seat to each borrower prior to renting or loan-  
21 ing out a seat to such borrower;

22 (3) Require each borrower to demonstrate correct use  
23 of child safety car seat prior to renting or loaning the seat  
24 to such borrower;

25 (4) Require each borrower to sign a statement indicat-  
26 ing that he or she understands how to use the child safety  
27 car seat correctly and has so demonstrated; and

28 (5) Comply with any other requirements which the  
29 state board of health may, by regulation, prescribe.

30 (c) A county, municipal or combined board of health  
31 offering a child safety car seat program shall not  
32 make available for loan or rental any child safety car  
33 seat which the board knows or has reason to believe was  
34 in use in a vehicle which was involved in a moderate or  
35 severe crash.

36 (d) This section is not intended to relieve any driver  
37 of a motor vehicle of his or her legal duty as prescribed  
38 by chapter seventeen-c, article fifteen, section forty-six  
39 of this code, to provide for the protection of a child by  
40 properly placing, maintaining and securing such child  
41 in a child passenger restraining system meeting applicable  
42 federal motor vehicle safety standards.

43 (e) Any county, municipal or combined board of health  
44 or employee or agent thereof which offers a child safety  
45 car seat program pursuant to this section shall be immune  
46 from civil or criminal liability in any action resulting  
47 from the improper use or malfunctioning or inadequate  
48 maintenance of a child safety car seat or from the im-  
49 proper placement, maintenance or securing of a child in  
50 a child safety car seat.

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## CHAPTER 86

(S. B. 675—By Mr. McGraw, Mr. President, and Senator Chace)

[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding language to clarify that additional services not defined under this section, may be included as part of "home health services."

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

That section one, article two-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 2C. HOME HEALTH SERVICES.**

**§16-2C-1. Definitions.**

1 For the purposes of this article:

2 "Home health services" shall mean and include, but  
3 not be limited to, the following services furnished to an  
4 individual who is under the care of a physician, such  
5 services to be provided on a visiting basis in a place of  
6 residence used as the individual's home: (1) Part-time or  
7 intermittent nursing care provided by or under the super-  
8 vision of a registered professional nurse; (2) physical,  
9 occupational or speech therapy; (3) medical social ser-  
10 vices under the direction of a physician; (4) part-time or  
11 intermittent services of a home health aide.

12 "Department" shall mean the state department of  
13 health.

14 "Local boards" shall mean local health boards estab-  
15 lished pursuant to the provisions of article two or two-a  
16 of this chapter.

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## CHAPTER 87

(S. B. 406—By Senator Chace)

[Passed March 2, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-e, relating to service providers in legally unlicensed health care facilities; stating the purpose of the article; defining terms; requiring registration of the service providers with the state director of health; prescribing the form of such registration; specifying information to be provided on the registration form; requiring the director of health to make

publicly available an annual list of registered service providers; authorizing inspections by the director of health; providing modes of enforcement; and specifying criminal penalties.

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

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

**ARTICLE 5E. REGISTRATION OF SERVICE PROVIDERS IN LEGALLY UNLICENSED HEALTH CARE FACILITIES.**

§16-5E-1. Purpose.

§16-5E-2. Definitions.

§16-5E-3. Registration of service providers required; form of registration; information to be provided.

§16-5E-4. Public availability of registry.

§16-5E-5. Inspections; right of entry.

§16-5E-6. Enforcement; criminal penalties.

**§16-5E-1. Purpose.**

1 It is the policy of this state to encourage the availability  
 2 of appropriate noninstitutional surroundings for the  
 3 elderly and for the care of persons in need of nursing  
 4 care or personal assistance. The registration of providers  
 5 of services to such consumers in unlicensed facilities will  
 6 help to identify where the services are available and to  
 7 ensure that individuals in unlicensed facilities are receiv-  
 8 ing care appropriate to their needs.

**§16-5E-2. Definitions.**

1 As used in this article, unless a different meaning  
 2 appears from the context:

3 (a) The term "consumer" means an individual who is  
 4 provided services, whether or not for a fee, by a service  
 5 provided, but consumer does not include a person receiv-  
 6 ing services provided by another who is related to him  
 7 or her or the spouse thereof by blood or marriage, within  
 8 the degree of consanguinity of second cousin;



9 (b) The term "director" means the director of the West  
10 Virginia state department of health or his designee;

11 (c) The term "nursing care" means those procedures  
12 commonly employed in providing for the physical, emo-  
13 tional and rehabilitational needs of the ill or otherwise  
14 incapacitated which require technical skills and knowl-  
15 edge beyond that which the untrained person possesses,  
16 including, but not limited to, such procedures as: Irriga-  
17 tions; catheterization; application of dressings; supervi-  
18 sion of special diets; objective observation of changes in  
19 patient condition as a means of analyzing and determin-  
20 ing nursing care required and the need for further medi-  
21 cal diagnosis and treatment; special procedures contribut-  
22 ing to rehabilitation; administration of medication by  
23 any method ordered by a physician, such as hypodermi-  
24 cally, rectally or orally; and carrying out other treat-  
25 ments prescribed by a physician which involve a like  
26 level of complexity and skill in administration;

27 (d) The term "personal assistance" means personal  
28 services, including, but not limited to, the following:  
29 Help in walking, bathing, dressing, feeding or getting in  
30 or out of bed, or supervision required because of the age  
31 or physical or mental impairment of the patient;

32 (e) The term "service provider" means the individual  
33 administratively responsible for providing to consumers  
34 for a period of more than twenty-four hours, whether  
35 for compensation or not, services of:

36 (1) Nursing care for one or two consumers; or

37 (2) Personal assistance for five or fewer consumers.

**§16-5E-3. Registration of service providers required; form  
of registration; information to be provided.**

1 (a) Service providers shall register with the director.  
2 No fee may be charged for registration. Registration in-  
3 formation shall be provided on a registration form or may  
4 be verbally communicated to the director for placement  
5 by the director on the form, but no provision of informa-  
6 tion shall be deemed to meet the registration require-

7 ment until the signature of the service provider is  
8 recorded on the registration form.

9 (b) Information required for registration shall include  
10 the following:

11 (1) Name, address and telephone number of the ser-  
12 vice provider;

13 (2) Addresses and telephone numbers where services  
14 are provided to consumers and the number of consumers  
15 provided service at each address; and

16 (3) The services, such as nursing care or personal as-  
17 sistance, provided to consumers at each address.

**§16-5E-4. Public availability of registry.**

1 The director shall publish and make available to the  
2 public on an annual basis a list of service providers  
3 registered in accordance with section three of this article.

**§16-5E-5. Inspections; right of entry.**

1 The director may employ inspectors to enforce the  
2 provisions of this article. These inspectors shall have  
3 the right of entry into any place where services are  
4 provided by a service provider, to determine the number  
5 of consumers therein and the adequacy of services being  
6 provided to them. The director may obtain a search  
7 warrant to inspect those premises that the director has  
8 reason to believe are being used to provide services.

**§16-5E-6. Enforcement; criminal penalties.**

1 (a) Any service provider who fails to register with the  
2 director within thirty days after personal service of  
3 written notice from the director of the registration re-  
4 quirements of this article, is guilty of a misdemeanor,  
5 and, upon conviction thereof, shall be fined not less than  
6 five hundred dollars or imprisoned in the county jail not  
7 less than ten days.

8 (b) Any person who interferes with or impedes in  
9 any way the lawful enforcement of the provisions of  
10 this article is guilty of a misdemeanor, and, upon con-

11 viction thereof, shall be fined not less than five hundred  
12 dollars or imprisoned in the county jail not less than ten  
13 days.

14 (c) The director may in his discretion bring an action  
15 to enforce compliance with the provisions of this article.

16 (d) The circuit court of Kanawha County shall have  
17 jurisdiction in all civil enforcement actions brought  
18 under this article and may order equitable relief without  
19 bond.

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## CHAPTER 88

(Com. Sub. for S. B. 407—By Senator Chace)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-h; and to amend and reenact sections one and three, article seventeen, chapter twenty-seven of said code, all relating to establishment and licensure of adult group homes for four to ten persons capable of self-preservation; authority of director of health to issue licenses, promulgate regulations, inspect, investigate and revoke licenses for good cause; requiring assistance from department of human services when requested by director of health; enforcement; injunction; criminal penalties; relating to group residential facilities; definition of "behavioral disability"; license; application; regulations; revocation.

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

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-h; and that sections one and three, article seventeen, chapter twenty-seven of said code be amended and reenacted, all to read as follows:

**Chapter****16. Public Health.****27. Mentally Ill Persons.****CHAPTER 16. PUBLIC HEALTH.****ARTICLE 5H. ADULT GROUP HOMES.****§16-5H-1. Definitions.****§16-5H-2. License from director of health; application; regulations; revocation; assistance from department of human services.****§16-5H-3. Enforcement; criminal penalties; injunction.****§16-5H-1. Definitions.**

1 (a) The term "adult group home" means any residence  
2 or any part or unit thereof, however named, in this state  
3 which is advertised, offered, maintained or operated by the  
4 ownership or management, whether for a consideration or  
5 not, for the express or implied purpose of providing  
6 accommodations, personal assistance and supervision, for a  
7 period of more than twenty-four hours, to four to ten  
8 persons who are dependent upon the services of others by  
9 reason of physical or mental impairment, but who do not  
10 require nursing care or personal care home services and  
11 who are capable of self-preservation.

12 (b) The term "self-preservation" means that a person is,  
13 at least, capable of removing his or her physical self from  
14 situations involving imminent danger, such as fire.

**§16-5H-2. License from director of health; application; regulations; revocation; assistance from department of human services.**

1 No adult group home shall be established, maintained or  
2 operated unless a license therefor shall be first obtained  
3 from the director of health. The application for such license  
4 shall contain such data and facts as the director may  
5 reasonably require. The director may promulgate  
6 reasonable regulations for the operation of such facilities,  
7 and to carry out the requirements of this article, in  
8 accordance with the requirements of article three, chapter  
9 twenty-nine-a of this code. The director shall have the  
10 authority to investigate and inspect any such facility and  
11 may revoke the license of any such facility for good cause

12 after notice and hearing. The department of human services  
13 shall cooperate with and assist the director of health in  
14 carrying out any requirements of this section, upon request  
15 of the director.

**§16-5H-3. Enforcement; criminal penalties; injunction.**

1 (a) Whoever establishes, maintains or operates, or is  
2 engaged in establishing, maintaining or operating an adult  
3 group home without a license granted under section two of  
4 this article, or who prevents, interferes with or impedes in  
5 any way the lawful enforcement of this article shall be  
6 guilty of a misdemeanor, and, upon conviction thereof, shall  
7 be punished for the first offense by a fine of not more than  
8 one hundred dollars, or by imprisonment in the county jail  
9 for a period of not more than ninety days, or by both such  
10 fine and imprisonment, at the discretion of the court. For  
11 each subsequent offense, the fine may be increased to not  
12 more than two hundred fifty dollars, with imprisonment in  
13 the county jail for a period of not more than ninety days, or  
14 both such fine and imprisonment, at the discretion of the  
15 court. Each day of a continuing violation after conviction  
16 shall be considered a separate offense.

17 (b) The director may in his discretion bring an action to  
18 enforce compliance with this article or any rule, regulation  
19 or order hereunder, whenever it shall appear to the director  
20 that any person has aided, abetted or caused, or is aiding,  
21 practice in violation of this article, or any rule, regulation or  
22 order hereunder, or whenever it shall appear to the director  
23 that any person has aided, abetted or caused, or is aiding,  
24 abetting or causing such an act or practice. Upon  
25 application by the director, the circuit court of the county in  
26 which the conduct has occurred shall have jurisdiction to  
27 grant, without bond, a permanent or temporary injunction,  
28 decree or restraining order.

**CHAPTER 27. MENTALLY ILL PERSONS.**

**ARTICLE 17. GROUP RESIDENTIAL FACILITIES.**

§27-17-1. Definitions.

§27-17-3. License from director of health; application; regulations; revocation.

**§27-17-1. Definitions.**

1 "Developmental disability" means a chronic disability of  
2 a person which: (1) Is attributable to a mental or physical  
3 impairment or combination of mental and physical  
4 impairments; (2) is likely to continue indefinitely; (3)  
5 results in substantial functional limitations in self-  
6 direction, capacity for independent living or economic  
7 self-sufficiency; and (4) reflects the person's need for a  
8 combination and sequence of special, interdisciplinary or  
9 generic care, treatment, or other services which are of  
10 lifelong or extended duration and are individually planned  
11 and coordinated. "Behavioral disability" means a disability  
12 of a person which: (1) Is attributable to severe or persistent  
13 mental illness, emotional disorder or chemical dependency,  
14 and (2) results in substantial functional limitations in self-  
15 direction, capacity for independent living or economic self-  
16 sufficiency.

17 "Group residential facility" means a facility which: (1)  
18 Provides residential services and supervision for  
19 individuals who are developmentally disabled or  
20 behaviorally disabled; (2) is occupied as a residence by not  
21 more than eight individuals who are developmentally  
22 disabled and not more than three supervisors, or is occupied  
23 as a residence by not more than twelve individuals who are  
24 behaviorally disabled and not more than three supervisors;  
25 (3) is licensed by the department of health or the  
26 department of human services; and (4) complies with the  
27 state fire commission for residential facilities.

**§27-17-3. License from director of health; application; regulations; revocation.**

1 No group residential facility shall be established,  
2 maintained or operated unless a license therefor shall be  
3 first obtained from the director of health, except that a  
4 group residential facility for behaviorally disabled  
5 juveniles shall be deemed to satisfy all requirements of this  
6 section by obtaining a license from the commissioner of  
7 human services. The application for such license shall  
8 contain such data and facts as the director may require. The  
9 director may promulgate reasonable regulations for the

10 conduct of such facilities, including, but not limited to, a  
11 statement of the rights of patients in group residential  
12 facilities for the mentally and physically impaired to ensure  
13 the adequate care and supervision of such patients, and  
14 shall have the authority to investigate and inspect any such  
15 facility, and may revoke the license of any such facility for  
16 good cause after notice and hearing.

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## CHAPTER 89

(Com. Sub. for H. B. 1615—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed March 5, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the date on which the health care cost review authority must apply to the federal government for an agreement on reimbursement to hospitals.

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

That section sixteen, article twenty-nine-b, 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 29B. WEST VIRGINIA HEALTH CARE COST REVIEW AUTHORITY.**

#### **§16-29B-16. Start-up period.**

1 (a) The department of health shall cooperate to the  
2 fullest extent possible and transfer all data, records, re-  
3 ports, analyses and summaries filed, collected or developed  
4 by the department of health pursuant to article five-f of  
5 this chapter, upon request of the board. With the approval  
6 of the board the department of health shall expend out  
7 of any funds available for the purpose such moneys as are  
8 necessary for the use of its staff by the board during the  
9 start-up period, and the department of health shall be reim-  
10 bursed by the board for any such expenses so incurred.

11 During the lifetime of the board the functions and respon-  
12 sibilities set forth in article five-f of this chapter shall be  
13 performed by the board, and whenever in this code reference  
14 is made to said article five-f, said reference shall be deemed  
15 to mean reference to the board.

16 (b) The board shall then compile all other relevant finan-  
17 cial and accounting data in order to have available the statisti-  
18 cal information necessary to properly conduct rate review  
19 and approval. Such data shall include necessary operating  
20 expenses, appropriate expenses incurred for rendering services  
21 to patients who cannot or do not pay, all properly incurred  
22 interest charges, and reasonable depreciation expenses based  
23 on the expected useful life of the property and equipment  
24 involved. The board shall also obtain from each hospital  
25 a current rate schedule as well as any subsequent amendments  
26 or modifications of that schedule as it may require.

27 (c) Prior to the commencement of review activities, the  
28 board may examine rate-making methods used by other  
29 regulatory agencies in the state and hospital rate-making  
30 agencies in other states before adopting a method or methods  
31 for determining rates for the hospitals subject to this article.

32 (d) Upon appointment, the board shall enter into negotia-  
33 tions with the health care financing administration within  
34 the United States department of health and human services to  
35 seek approval and assurances from, and enter into agree-  
36 ments with, the United States department of health and human  
37 services so that the aforementioned federal agency and af-  
38 fected state agencies allow reimbursement to hospitals sub-  
39 ject to the provisions of this article in accordance with rates  
40 approved by the board. The absence of such approval and  
41 assurances from, and agreements with, the health care financing  
42 administration within the department of health and human  
43 services shall not diminish the authority of the board to set  
44 rates of payment for other payors.

45 (e) Within sixty days after the publication in the federal  
46 register of the interim regulations to implement section  
47 1886(c) of the social security act, the board shall submit  
48 its application for purposes of entering into an agreement



49 with the secretary of the department of health and human  
50 services so that the aforementioned federal agency agrees  
51 to allow payment for services provided by hospitals subject  
52 to the provisions of this article in accordance with rates  
53 approved by the board.

54 (f) No later than the first day of June, one thousand  
55 nine hundred eighty-three, every hospital shall provide to  
56 the board a full and complete verified statement of services  
57 offered as of the first day of February, one thousand nine  
58 hundred eighty-three, together with a verified statement of  
59 rates in effect as of the first day of February, one thousand  
60 nine hundred eighty-three, for such services.

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## CHAPTER 90

(Com. Sub. for S. B. 431—By Senator Chernenko and Mr. McGraw, Mr. President)

[Passed March 14, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, six, seven, eight, nine, ten and thirteen, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto three new sections, designated sections eight-b, eight-c and thirteen-b, relating to horse and dog racing generally; providing additional definitions; increasing the authority of the racing commission; authority to impose penalties; providing minimum number of racing days; allowing Sunday racing; providing for local option elections; granting authority to racing associations to withhold certain commission; changing and reducing the pari-mutuel tax; providing for disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; and granting authority for racing commission to establish West Virginia thoroughbred development fund and to provide awards, purse supplements and moneys for capital improvements therefrom.

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

That sections three, six, seven, eight, nine, ten and thirteen, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto three new sections, designated sections eight-b, eight-c and thirteen-b, all to read as follows:

**ARTICLE 23. HORSE AND DOG RACING.**

**PART II. DEFINITIONS: WEST VIRGINIA RACING COMMISSION—  
ORGANIZATION AND OPERATION.**

§19-23-3. Definitions.

**PART IV. POWERS AND AUTHORITY OF RACING COMMISSION.**

§19-23-6. Powers and authority of racing commission.

**PART V. LICENSE AND PERMIT PROCEDURES.**

- §19-23-7. Application for license; forms; time for filing; disclosure required; verification; bond; application for permit.
- §19-23-8. Consideration of application for license or permit; issuance or denial; contents of license or permit; grounds for denial of application; determination of racing dates; license or permit not transferable or assignable; limitation on license; validity of permit.
- §19-23-8b. Horse or dog racing after six o'clock postmeridian on Sundays; application therefor; tentative approval; publication of notice; petition for local option election; local option election procedure; effect of such election.
- §19-23-8c. Local option election procedure; form of ballot or ballot labels; effect of such election.
- §19-23-9. Pari-mutuel system of wagering authorized; license authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

**PART VII. TAXATION OF HORSE RACING AND  
PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.**

- §19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.
- §19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.
- §19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; nonrestricted purse supplements.

PART II. DEFINITIONS; WEST VIRGINIA RACING COMMISSION —  
ORGANIZATION AND OPERATION.

§19-23-3. Definitions.

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

3 (1) "Horse racing" means any type of horse racing,  
4 including, but not limited to, thoroughbred racing and  
5 harness racing;

6 (2) "Thoroughbred racing" means flat or running type  
7 horse racing in which each horse participating therein is a  
8 thoroughbred and is mounted by a jockey;

9 (3) "Harness racing" means horse racing in which the  
10 horses participating therein are harnessed to a sulky,  
11 carriage or other vehicle, and shall not include any form of  
12 horse racing in which the horses are mounted by jockeys;

13 (4) "Horse race meeting" means the whole period of  
14 time for which a license is required by the provisions of  
15 section one of this article;

16 (5) "Dog racing" means any type of dog racing,  
17 including, but not limited to, greyhound racing;

18 (6) "Purse" means any purse, stake or award for which a  
19 horse or dog race is run;

20 (7) "Racing association" or "person" means any  
21 individual, partnership, firm, association, corporation or  
22 other entity or organization of whatever character or  
23 description;

24 (8) "Applicant" means any racing association making  
25 application for a license under the provisions of this article,  
26 or any person making application for a permit under the  
27 provisions of this article, or any person making application  
28 for a construction permit under the provisions of this  
29 article, as the case may be;

30 (9) "License" means the license required by the  
31 provisions of section one of this article;

32 (10) "Permit" means the permit required by the  
33 provisions of section two of this article;

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34 (11) "Construction permit" means the construction  
35 permit required by the provisions of section eighteen of this  
36 article;

37 (12) "Licensee" means any racing association holding a  
38 license required by the provisions of section one of this  
39 article and issued under the provisions of this article;

40 (13) "Permit holder" means any person holding a permit  
41 required by the provisions of section two of this article and  
42 issued under the provisions of this article;

43 (14) "Construction permit holder" means any person  
44 holding a construction permit required by the provisions of  
45 section eighteen of this article and issued under the  
46 provisions of this article;

47 (15) "Hold or conduct" includes "assist, aid or abet in  
48 holding or conducting";

49 (16) "Racing commission" means the West Virginia  
50 racing commission;

51 (17) "Stewards" means the steward or stewards  
52 representing the racing commission, the steward or  
53 stewards representing a licensee and any other steward or  
54 stewards, whose duty it shall be to supervise any horse or  
55 dog race meeting, all as may be provided by reasonable  
56 rules and regulations of the racing commission, and such  
57 reasonable rules and regulations shall specify the number  
58 of stewards to be appointed, the method and manner of  
59 their appointment and their powers, authority and duties;

60 (18) "Pari-mutuel" means a mutuel or collective pool  
61 that can be divided among those who have contributed their  
62 wagers to one central agency, the odds to be reckoned in  
63 accordance to the collective amounts wagered upon each  
64 contestant running in a horse or dog race upon which the  
65 pool is made, but the total to be divided among the first  
66 three contestants on the basis of the number of wagers on  
67 these;

68 (19) "Pool" means a combination of interests in a joint  
69 wagering enterprise, or a stake in such enterprise;

70 (20) "Legitimate breakage" is the percentage left over  
71 in the division of a pool;

72 (21) "To the dime" means that wagers shall be figured  
73 and paid to the dime;

74 (22) "Code" means the code of West Virginia, one  
75 thousand nine hundred thirty-one, as heretofore and  
76 hereinafter amended;

77 (23) "Accredited thoroughbred horse" means a  
78 thoroughbred horse that is either: (a) Foaled in West  
79 Virginia; or (b) sired by an accredited West Virginia sire; or  
80 (c) as a yearling, finished twelve consecutive months of  
81 verifiable residence in the state, except for thirty days grace  
82 for the horse to be shipped to and from horse sales where  
83 said horse is officially entered in the sales catalogue of a  
84 recognized thoroughbred sales company. No thoroughbred  
85 horse shall qualify under part (c) of this section after the  
86 first day of July, one thousand nine hundred ninety;

87 (24) "Accredited West Virginia sire" is a sire that is  
88 permanently domiciled in West Virginia, stands a full  
89 season in West Virginia and is registered with the West  
90 Virginia thoroughbred breeders association;

91 (25) "Breeder of an accredited West Virginia horse" is  
92 the owner of the foal at the time it was born in West  
93 Virginia;

94 (26) "Raiser of an accredited West Virginia horse" is the  
95 owner of the yearling at the time it finished twelve  
96 consecutive months of verifiable residence in the state.  
97 During the period, the raiser will be granted one month of  
98 grace for his horse to be shipped to and from thoroughbred  
99 sales where the horse is officially entered in the sales  
100 catalogue of a recognized thoroughbred sales company.  
101 Prior to the horse being shipped out of the state for sales, the  
102 raiser must notify the racing commission of his intentions;

103 (27) The "owner of an accredited West Virginia sire" is  
104 the owner of record at the time the offspring is conceived;

105 (28) The "owner of an accredited West Virginia horse"  
106 means the owner at the time said horse earned designated  
107 purses to qualify for restricted purse supplements provided  
108 for in section thirteen-b of this article; and

109 (29) "Fund" means the West Virginia thoroughbred  
110 development fund established in section thirteen-b of this  
111 article.

PART IV. POWERS AND AUTHORITY OF RACING COMMISSION.

**§19-23-6. Powers and authority of racing commission.**

1 The racing commission shall have full jurisdiction over  
2 and shall supervise all horse race meetings, all dog race  
3 meetings and all persons involved in the holding or  
4 conducting of horse or dog race meetings, and, in this  
5 regard, it shall have plenary power and authority:

6 (1) To investigate applicants and determine the  
7 eligibility of such applicants for a license or permit or  
8 construction permit under the provisions of this article;

9 (2) To fix, from time to time, the annual fee to be paid to  
10 the racing commission for any permit required under the  
11 provisions of section two of this article;

12 (3) To promulgate reasonable rules and regulations  
13 implementing and making effective the provisions of this  
14 article and the powers and authority conferred and the  
15 duties imposed upon the racing commission under the  
16 provisions of this article, including, but not limited to,  
17 reasonable rules and regulations under which all horse  
18 races, dog races, horse race meetings and dog race meetings  
19 shall be held and conducted, all of which reasonable rules  
20 and regulations shall be promulgated in accordance with  
21 the provisions of article three, chapter twenty-nine-a of this  
22 code;

23 (4) To register colors and assumed names and to fix,  
24 from time to time, the annual fee to be paid to the racing  
25 commission for any such registration;

26 (5) To fix and regulate the minimum purse to be offered  
27 during any horse or dog race meeting;

28 (6) To fix a minimum and a maximum number of horse  
29 races or dog races to be held on any respective racing day;

30 (7) To enter the office, horse racetrack, dog racetrack,  
31 kennel, facilities and other places of business of any

32 licensee to determine whether the provisions of this article  
33 and its reasonable rules and regulations are being complied  
34 with, and for this purpose, the racing commission, its racing  
35 secretary, representatives and employees may visit,  
36 investigate and have free access to any such office, horse  
37 racetrack, dog racetrack, kennel, facilities and other places  
38 of business;

39 (8) To investigate alleged violations of the provisions of  
40 this article, its reasonable rules and regulations, orders and  
41 final decisions and to take appropriate disciplinary action  
42 against any licensee or permit holder or construction permit  
43 holder for the violation thereof or institute appropriate  
44 legal action for the enforcement thereof or take such  
45 disciplinary action and institute such legal action;

46 (9) By reasonable rules and regulations, to authorize  
47 stewards, starters and other racing officials to impose  
48 reasonable fines or other sanctions upon any person  
49 connected with or involved in any horse or dog racing or any  
50 horse or dog race meeting; and to authorize stewards to rule  
51 off the grounds of any horse or dog racetrack any tout,  
52 bookmaker or other undersirable individual deemed  
53 inimicable to the best interests of horse and dog racing or  
54 the pari-mutuel system of wagering in connection  
55 therewith;

56 (10) To require at any time the removal of any racing  
57 official or racing employee of any licensee, for the violation  
58 of any provision of this article, any reasonable rule and  
59 regulation of the racing commission or for any fraudulent  
60 practice;

61 (11) To acquire, establish, maintain and operate, or to  
62 provide by contract for the maintenance and operation of, a  
63 testing laboratory and related facilities, for the purpose of  
64 conducting saliva, urine and other tests on the horse or dog  
65 or horses or dogs run or to be run in any horse or dog race  
66 meeting, and to purchase all equipment and supplies  
67 deemed necessary or desirable in connection with the  
68 acquisition, establishment, maintenance and operation of  
69 any such testing laboratory and related facilities and all  
70 such tests;

71 (12) To hold up, in any disputed horse or dog race, the  
72 payment of any purse, pending a final determination of the  
73 results thereof;

74 (13) To require each licensee to file an annual balance  
75 sheet and profit and loss statement pertaining to such  
76 licensee's horse or dog racing activities in this state,  
77 together with a list of each such licensee's stockholders or  
78 other persons having any beneficial interest in the horse or  
79 dog racing activities of such licensee;

80 (14) To issue subpoenas for the attendance of witnesses  
81 and subpoenas duces tecum for the production of any  
82 books, records and other pertinent documents, and to  
83 administer oaths and affirmations to such witnesses,  
84 whenever, in the judgment of the racing commission, it is  
85 necessary to do so for the effective discharge of its duties  
86 under the provisions of this article;

87 (15) To keep accurate and complete records of its  
88 proceedings and to certify the same as may be appropriate;

89 (16) To take such other action as may be reasonable or  
90 appropriate to effectuate the provisions of this article and  
91 its reasonable rules and regulations;

92 (17) To provide breeders' awards, purse supplements  
93 and moneys for capital improvements at racetracks in  
94 compliance with section thirteen-b of this article.

95 The racing commission shall not interfere in the internal  
96 business or internal affairs of any licensee.

#### PART V. LICENSE AND PERMIT PROCEDURES.

#### **§19-23-7. Application for license; forms; time for filing; disclosure required; verification; bond; application for permit.**

1 (a) Any racing association desiring to hold or conduct a  
2 horse or dog race meeting, where the pari-mutuel system of  
3 wagering is permitted and conducted, during any calendar  
4 year, shall file with the racing commission an application  
5 for a license to hold or conduct such horse or dog race  
6 meeting. A separate application shall be filed for each



7 separate license sought for each horse or dog race meeting  
8 which such applicant proposes to hold or conduct. The  
9 racing commission shall prescribe blank forms to be used in  
10 making such application. Such application shall be filed on  
11 or before a day to be fixed by the racing commission and  
12 shall disclose, but not be limited to, the following:

13 (1) If the applicant be an individual, the full name and  
14 address of the applicant;

15 (2) If the applicant be a partnership, firm or association,  
16 the full name and address of each partner or member  
17 thereof, the name of the partnership, firm or association  
18 and its post-office address;

19 (3) If the applicant be a corporation, its name, the state  
20 of its incorporation, its post-office address, the full name  
21 and address of each officer and director thereof, and if a  
22 foreign corporation, whether it is qualified to do business in  
23 this state;

24 (4) The dates, totaling not less than two hundred, such  
25 applicant intends to hold or conduct such horse or dog race  
26 meeting (which may be on any day including Sundays);

27 (5) The location of the horse or dog racetrack, place or  
28 enclosure where such applicant proposes to hold or conduct  
29 such horse or dog race meeting;

30 (6) Whether the applicant, any partner, member, officer  
31 or director has previously applied for a license under the  
32 provisions of this article or for a similar license in this or  
33 any other state, and if so, whether such license was issued or  
34 refused, and, if issued, whether it was ever suspended or  
35 revoked; and

36 (7) Such other information as the racing commission  
37 may reasonably require which may include information  
38 relating to any criminal record of the applicant, if an  
39 individual, or of each partner or member, if a partnership,  
40 firm or association, or of each officer and director, if a  
41 corporation.

42 (b) Such application shall be verified by the oath or  
43 affirmation of the applicant for such license, if an  
44 individual, or if the applicant is a partnership, firm,

45 association or corporation, by a partner, member or officer  
46 thereof, as the case may be. When required by the racing  
47 commission, an applicant for a license shall also furnish  
48 evidence satisfactory to the racing commission of such  
49 applicant's ability to pay all taxes due the state, purses,  
50 salaries of officials and other expenses incident to the horse  
51 or dog race meeting for which a license is sought. In the  
52 event the applicant is not able to furnish such satisfactory  
53 evidence of such applicant's ability to pay such expenses  
54 and fees, the racing commission may require bond or other  
55 adequate security before the requested license is issued.

56 (c) Any person desiring to obtain a permit, as required  
57 by the provisions of section two of this article, shall make  
58 application therefor on a form prescribed by the racing  
59 commission. The application for any such permit shall be  
60 accompanied by the fee prescribed therefor by the racing  
61 commission. Each applicant for a permit shall set forth in  
62 the application such information as the racing commission  
63 shall reasonably require.

**§19-23-8. Consideration of application for license or permit;  
issuance or denial; contents of license or permit;  
grounds for denial of application; determination  
of racing dates; license or permit not transferable  
or assignable; limitation on license; validity of  
permit.**

1 (a) The racing commission shall promptly consider any  
2 application for a license or permit, as the case may be. Based  
3 upon such application and all other information before it,  
4 the racing commission shall make and enter an order either  
5 approving or denying such application. The application  
6 shall be denied for any reason specified in subsection (b) of  
7 this section. If an application for a license is approved, the  
8 racing commission shall issue a license to conduct a horse or  
9 dog race meeting, and shall designate on the face of such  
10 license the kind or type of horse or dog racing for which the  
11 same is issued, the racing association to which the same is  
12 issued, the dates upon which such horse or dog race meeting  
13 is to be held or conducted (which may be any weekday, or  
14 weeknight, including Sundays), the location of the horse or  
15 dog racetrack, place or enclosure where such horse or dog

16 race meeting is to be held or conducted and such other  
17 information as the racing commission shall deem proper. If  
18 an application for a permit is approved, the racing  
19 commission shall issue a permit and shall designate on the  
20 face of such permit such information as the racing  
21 commission shall deem proper.

22 (b) The racing commission shall deny the application  
23 and refuse to issue the license or permit, as the case may be,  
24 which denial and refusal shall be final and conclusive  
25 unless a hearing is demanded in accordance with the  
26 provisions of section sixteen of this article, if the racing  
27 commission finds that the applicant (individually, if an  
28 individual, or the partners or members, if a partnership,  
29 firm or association, or the owners and directors, if a  
30 corporation):

31 (1) Has knowingly made false statement of a material  
32 fact in the application or has knowingly failed to disclose  
33 any informaion called for in the application;

34 (2) Is or has been guilty of any corrupt or fraudulent act,  
35 practice or conduct in connection with any horse or dog race  
36 meeting in this or any other state;

37 (3) Has been convicted, within ten years prior to the  
38 date of such application, of an offense which under the law  
39 of this state, of any other state or of the United States of  
40 America, shall constitute a felony or a crime involving  
41 moral turpitude;

42 (4) Has failed to comply with the provisions of this  
43 article or any reasonable rules and regulations of the racing  
44 commission;

45 (5) Has had a license to hold or conduct a horse or dog  
46 race meeting or a permit to participate therein denied for  
47 just cause, suspended or revoked in any other state;

48 (6) Has defaulted in the payment of any obligation or  
49 debt due to this state under the provisions of this article;

50 (7) Is, if a corporation, neither incorporated under the  
51 laws of this state nor qualified to do business within this  
52 state;

53 (8) In the case of an application for a license, has failed  
54 to furnish bond or other adequate security, if the same is  
55 required by the racing commission under the provisions of  
56 section seven of this article;

57 (9) In the case of an application for a permit, is  
58 unqualified to perform the duties required for the permit  
59 sought; or

60 (10) In the case of an application for a permit, is, for just  
61 cause, determined to be undesirable to perform the duties  
62 required of such applicant.

63 (c) In issuing licenses and fixing dates for horse or dog  
64 race meetings at the various horse racetracks and dog  
65 racetracks in this state, the racing commission shall  
66 consider the horse racing circuits and dog racing circuits  
67 with which the horse racetracks and dog racetracks in this  
68 state are associated or contiguous to, and shall also consider  
69 dates which are calculated to increase the tax revenues  
70 accruing from horse racing and dog racing.

71 (d) A license issued under the provisions of this article is  
72 neither transferable nor assignable to any other racing  
73 association and shall not permit the holding or conducting  
74 of a horse or dog race meeting at any horse or dog racetrack,  
75 place or enclosure not specified thereon. However, if the  
76 specified horse or dog racetrack, place or enclosure  
77 becomes unsuitable for the horse or dog race meeting  
78 because of flood, fire or other catastrophe, or cannot be used  
79 for any reason, the racing commission may, upon  
80 application, authorize the horse or dog race meeting, or any  
81 remaining portion thereof, to be conducted at any other  
82 racetrack, place or enclosure available for that purpose,  
83 provided that the owner of such racetrack, place or  
84 enclosure willingly consents to the use thereof.

85 (e) No type of horse racing or dog racing shall be  
86 conducted by a licensee at any race meeting other than that  
87 type for which a license was issued.

88 (f) Each permit issued under the provisions of this  
89 section shall be for the period ending December thirty-first  
90 of the year for which it was issued, and shall be valid at all

91 horse or dog race meetings during the period for which it  
92 was issued, unless it be sooner suspended or revoked in  
93 accordance with the provisions of this article. A permit  
94 issued under the provisions of this article is neither  
95 transferable nor assignable to any other person.

**§19-23-8b. Horse or dog racing after six o'clock postmeridian  
on Sundays; application therefor; tentative  
approval; publication of notice; petition for  
local option election; local option election  
procedure; effect of such election.**

1 (a) Notwithstanding any other provisions of this code to  
2 the contrary, a racing association licensed under the  
3 provisions of section one of this article and operating a  
4 horse or dog racetrack in a county in which Sunday racing  
5 has been approved under provisions of section eight-a of  
6 this article may make applications to the racing commission  
7 for permission to conduct horse or dog racing after the hour  
8 of six o'clock postmeridian on Sundays.

9 (b) The racing commission, if it finds such application to  
10 be in order, may grant tentative approval of such  
11 application and, if it grants tentative approval, shall  
12 prepare and publish a notice to the public that the racing  
13 commission has granted tentative approval of the  
14 application and that the racing commission will make final  
15 confirmation of such application at the expiration of sixty  
16 days from the date of the first publication of such notice,  
17 which date shall be specified in said notice, unless within  
18 that time a petition for a local option election has been filed  
19 in accordance with subsection (c) of this section with the  
20 county commission of the county in which such racetrack is  
21 located. Such notice shall be published as a Class II legal  
22 advertisement in compliance with the provisions of article  
23 three, chapter fifty-nine of this code, and the publication  
24 area for such publication shall be the county in which the  
25 racetrack is located: *Provided*, That prior to granting  
26 tentative approval hereunder, the racing commission shall  
27 solicit public comment from the citizens of the county  
28 wherein the horse racing track or dog racing track is located  
29 and shall take such comment into consideration in deciding  
30 whether or not to grant tentative approval.

31 (c) The county commission, upon the written petition of  
32 qualified voters residing within the county equal to at least  
33 fifteen percent of the number of persons who voted in that  
34 county in the next preceding general election, which  
35 petition may be in any number of counterparts, shall order  
36 an election to determine whether it is the will of the voters  
37 of said county that racing be permitted after the hour of six  
38 o'clock postmeridian on Sundays in the county.

39 (d) No election to determine whether it is the will of the  
40 voters of a county that racing be permitted after the hour of  
41 six o'clock postmeridian on Sundays in the county may be  
42 held at a general or primary election or within sixty days of  
43 any such election or in conjunction with any other election.

44 (e) The ballot, or the ballot labels where voting  
45 machines are used, shall have printed thereon substantially  
46 the following:

47 "Shall the West Virginia Racing Commission be  
48 authorized to approve horse racing on Sundays after the  
49 hour of six p.m. in ..... County,  
50 West Virginia?

51  Yes  No

52 (Place a cross mark in the square opposite your choice.)"

53 In a county in which dog racing is conducted, the term  
54 "dog racing" shall be substituted for "horse racing" on the  
55 ballot or ballot label.

56 (f) Each individual qualified to vote in the county is  
57 qualified to vote at the local option election. The votes in the  
58 local option election shall be counted and returns made by  
59 the election officers and the results certified by the  
60 commissioners of election to the county commission, which  
61 shall canvass the ballots, all in accordance with the laws of  
62 this state relating to general elections insofar as the same  
63 are applicable. The county commission shall, without delay,  
64 canvass the votes cast at such local option election and  
65 certify the results thereof to the racing commission and  
66 shall transmit a certified copy of the results to the secretary  
67 of state.

68 (g) The racing commission shall, after the certification

69 of the results of such local option election, thereafter  
70 approve an application for a license which contains racing  
71 dates which fall on Sunday for any hour or hours after six  
72 o'clock postmeridian if a majority of the voters voting at  
73 such local option election vote yes and on such racing dates  
74 all racing and other activities authorized by this article are  
75 lawful, any other provisions of this code to the contrary  
76 notwithstanding.

**§19-23-8c. Local option election procedure; form of ballot or  
ballot labels; effect of such election.**

1 (a) Notwithstanding any other provision of law to the  
2 contrary, no license for dog racing may be issued for dog  
3 racing in any county wherein horse racing has been  
4 conducted at any time during the fifteen years preceding  
5 the application for such license, unless first approved by the  
6 voters of the county in which the proposed dog racing track  
7 is to be located. The county commission of any county in  
8 which horse racing has been conducted at any time during  
9 such fifteen-year period and in which a proposed dog racing  
10 track is to be located is hereby authorized to call a local  
11 option election for the purpose of determining the will of  
12 the qualified voters within said county as to whether the  
13 racing commission may approve an application for a license  
14 for dog racing if the application and the applicant are  
15 otherwise in compliance with the provisions of this article  
16 and this code.

17 (b) The county commission may order an election to  
18 determine whether it is the will of the voters of said county  
19 that dog racing be permitted in said county.

20 (c) Any election to determine whether it is the will of the  
21 voters of said county that dog racing be permitted in said  
22 county shall be held at a general or primary election.

23 (d) The county commission shall give notice of such  
24 election by publication of such notice as a Class II-0 legal  
25 advertisement in accordance with the provisions of article  
26 three, chapter fifty-nine of this code. Such notice shall be  
27 published within twenty-one consecutive days next  
28 preceding the date of said election.

29 (e) The ballot, or the ballot labels where voting  
30 machines are used, shall have printed thereon substantially  
31 the following:

32 "Shall the West Virginia Racing Commission be  
33 authorized to approve dog racing in ..... County,  
34 West Virginia?

35  Yes  No

36 (Place a cross mark in the square opposite your choice.)"

37 Each individual qualified to vote in said county shall be  
38 qualified to vote at the local option election. The votes in  
39 said local option election shall be counted and returns made  
40 by the election officers and the results certified by the  
41 commissioners of election to the county commission, which  
42 shall canvass the ballots, all in accordance with the laws of  
43 this state relating to general elections insofar as the same  
44 are applicable. The county commission shall, without delay,  
45 canvass the votes cast at such local option election and  
46 certify the results thereof to the racing commission, and  
47 shall transmit a certified copy of said results to the  
48 secretary of state.

49 (f) The racing commission may, after the certification of  
50 the results of such local option election, thereafter approve  
51 an application for a license for dog racing if a majority of  
52 the voters voting at such local option election vote yes.

53 (g) After an election to determine whether it is the will  
54 of the voters of the county that dog racing be permitted in  
55 said county, another election on such issue shall not be held  
56 for a period of five years.

57 (h) If at such election a majority of the voters of said  
58 county shall approve dog racing in said county, it is lawful  
59 for the county commission, after five years from such  
60 approval, and it shall be the duty of the county commission  
61 upon a petition in writing of qualified voters residing  
62 within the county equal to at least fifteen percent of the  
63 number of persons who voted in that county in the next  
64 preceding general election, which petition may be in any  
65 number of counterparts, to order an election to determine  
66 whether it is the will of the voters of said county that dog



67 racing be discontinued in said county. The provisions of  
68 subsections (c), (d) and (e) of this section shall govern said  
69 election. The ballot, or the ballot labels where voting  
70 machines are used, shall have printed thereon substantially  
71 the following:

72 "Shall racing of dogs in ..... County, West  
73 Virginia be discontinued?

74  Yes  No

75 (Place a cross mark in the square opposite your choice.)"

**§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.**

1 (a) The pari-mutuel system of wagering upon the results  
2 of any horse or dog race at any horse or dog race meeting  
3 conducted or held by any licensee is hereby authorized, if  
4 and only if such pari-mutuel wagering is conducted by such  
5 licensee within the confines of such licensee's horse  
6 racetrack or dog racetrack, and the provisions of section  
7 one, article ten, chapter sixty-one of this code, relating to  
8 gaming, shall not apply to the pari-mutuel system of  
9 wagering in manner and form as provided for in this article  
10 at any horse or dog race meeting within this state where  
11 horse or dog racing shall be permitted for any purse by any  
12 licensee. A licensee shall permit or conduct only the pari-  
13 mutuel system of wagering within the confines of such  
14 licensee's racetrack at which any horse or dog race meeting  
15 is conducted or held.

16 (b) A licensee is hereby expressly authorized to deduct a  
17 commission from the pari-mutuel pools, as follows:

18 (1) The commission deducted by any licensee from the  
19 pari-mutuel pools on thoroughbred horse racing, except  
20 from thoroughbred horse racing pari-mutuel pools  
21 involving what is known as multiple betting in which the  
22 winning pari-mutuel ticket or tickets are determined by a  
23 combination of two or more winning horses, shall not  
24 exceed seventeen and one-fourth percent of the total of such  
25 pari-mutuel pools for the day. Out of such commission, as is  
26 mentioned in this subdivision, the licensee (i) shall pay the

27 pari-mutuel pools tax provided for in subsection (b), section  
28 ten of this article, (ii) shall make a deposit into a special  
29 fund to be established by the licensee and to be used for the  
30 payment of regular purses offered for thoroughbred racing  
31 by the licensee, which deposits out of pari-mutuel pools for  
32 each day during the months of January, February, March,  
33 October, November and December shall be seven and  
34 seventy-five one-thousandths percent of such pari-mutuel  
35 pools, and which, out of pari-mutuel pools for each day  
36 during all other months, shall be six and five hundred  
37 seventy-five one-thousandths percent of such pari-mutuel  
38 pools, (iii) shall, after allowance for the exclusion given by  
39 subsection (b), section ten of this article, make a deposit  
40 into a special fund to be established by the racing  
41 commission and to be used for the payment of breeders'  
42 awards and capital improvements as authorized by section  
43 thirteen-b of this article, which deposits out of pari-mutuel  
44 pools shall, from the effective date of this section and for  
45 fiscal year one thousand nine hundred eighty-five, be four-  
46 tenths percent; for fiscal year one thousand nine hundred  
47 eighty-six, be seven-tenths percent; for fiscal year one  
48 thousand nine hundred eighty-seven, be one percent; for  
49 fiscal year one thousand nine hundred eighty-eight, be one  
50 and one-half percent; and for fiscal year one thousand nine  
51 hundred eighty-nine, and each year thereafter, be two  
52 percent of such pools, and (iv) shall pay one tenth of one  
53 percent of such pari-mutuel pools into the general fund of  
54 the county commission of the county in which the racetrack  
55 is located, except if within a municipality, then to such  
56 municipal general fund. The remainder of the commission  
57 shall be retained by the licensee.

58 The commission deducted by any licensee from the pari-  
59 mutuel pools on thoroughbred horse racing involving what  
60 is known as multiple betting in which the winning pari-  
61 mutuel ticket or tickets are determined by a combination of  
62 two winning horses shall not exceed nineteen percent and  
63 by a combination of three or more winning horses shall not  
64 exceed twenty-five percent of the total of such pari-mutuel  
65 pools for the day. Out of such commission, as is mentioned  
66 in this paragraph, the licensee (i) shall pay the pari-mutuel  
67 pools tax provided for in subsection (b), section ten of this

68 article, (ii) shall make a deposit into a special fund to be  
69 established by the licensee and to be used for the payment of  
70 regular purses offered for thoroughbred racing by the  
71 licensee, which deposits out of pari-mutuel pools for each  
72 day during the months of January, February, March,  
73 October, November and December for pools involving a  
74 combination of two winning horses shall be seven and  
75 ninety-five one-hundredths percent and out of pari-mutuel  
76 pools for each day during all other months shall be seven  
77 and forty-five one-hundredths percent of such pari-mutuel  
78 pools; and involving a combination of three or more  
79 winning horses for the months of January, February,  
80 March, October, November and December the deposits out  
81 of such fund shall be ten and ninety-five one-hundredths  
82 percent of such pari-mutuel pools; and which, out of pari-  
83 mutuel pools for each day during all other months, shall be  
84 ten and forty-five one-hundredths percent of such pari-  
85 mutuel pools, (iii) shall, after allowance for the exclusion  
86 given by subsection (b), section ten of this article, make a  
87 deposit into a special fund to be established by the racing  
88 commission and to be used for the payment of breeders'  
89 awards and capital improvements as authorized by section  
90 thirteen-b of this article, which deposits out of pari-mutuel  
91 pools shall, from the effective date of this section and for  
92 fiscal year one thousand nine hundred eighty-five, be four-  
93 tenths percent; for fiscal year one thousand nine hundred  
94 eighty-six, be seven-tenths percent; for fiscal year one  
95 thousand nine hundred eighty-seven, be one percent; for  
96 fiscal year one thousand nine hundred eighty-eight, be one  
97 and one-half percent; and for fiscal year one thousand nine  
98 hundred eighty-nine, and each year thereafter, be two  
99 percent of such pools, and (iv) shall pay one tenth of one  
100 percent of such pari-mutuel pools into the general fund of  
101 the county commission of the county in which the racetrack  
102 is located, except if within a municipality, then to such  
103 municipal general fund. The remainder of the commission  
104 shall be retained by the licensee.

105 The deposits into special fund established by the racing  
106 commission to be used for payments of breeders' awards  
107 and other expenses authorized by section thirteen-b of this  
108 article shall be reduced by fifty percent in the event the

109 average daily pari-mutuel pool for any calendar year is less  
110 than the average daily pari-mutuel pool for the calendar  
111 year ended the thirty-first day of December, one thousand  
112 nine hundred eighty-three, in amount equal to eleven  
113 percent of the average daily pari-mutuel pool for said  
114 calendar year ended the thirty-first day of December, one  
115 thousand nine hundred eighty-three. Of the amounts so  
116 reduced, fifty percent shall be paid into the special purse  
117 fund established in section nine-b of this article.

118 The commission deducted by the licensee under  
119 subdivision (1), subsection (b) of this section may be  
120 reduced only by mutual agreement between the licensee  
121 and a majority of the trainers and horse owners licensed by  
122 subsection (a), section two of this article or their designated  
123 representative. Such reduction in licensee commissions  
124 may be for a particular race, racing day or days or for a  
125 horse race meeting. Fifty percent of such reduction shall be  
126 retained by licensee from the amounts required to be paid  
127 into the special fund established by the licensee under the  
128 provisions of subdivision (1), subsection (b) of this section.  
129 The racing commission shall promulgate such reasonable  
130 rules and regulations as are necessary to implement the  
131 foregoing provisions.

132 (2) The commission deducted by any licensee from the  
133 pari-mutuel pools on harness racing shall not exceed  
134 seventeen and one-half percent of the total of such pari-  
135 mutuel pools for the day. Out of such commission the  
136 licensee shall pay the pari-mutuel pools tax provided for in  
137 subsection (c), section ten of this article, and shall pay one  
138 tenth of one percent into the general fund of the county  
139 commission of the county in which the racetrack is located,  
140 except if within a municipality, then to such municipal  
141 general fund. The remainder of the commission shall be  
142 retained by the licensee.

143 (3) The commission deducted by any licensee from the  
144 pari-mutuel pools on dog racing shall not exceed sixteen  
145 and thirty-one-hundredths percent of the total of such  
146 pari-mutuel pools for the day. Out of such commission, the  
147 licensee shall pay the pari-mutuel pools tax provided for in  
148 subsection (d), section ten of this article, and shall pay one

149 tenth of one percent of such pari-mutuel pools into the  
150 general fund of the county commission of the county in  
151 which the racetrack is located, except if within a  
152 municipality, then to such municipal general fund. The  
153 remainder of the commission shall be retained by the  
154 licensee.

155 (c) In addition to any such commission, a licensee of  
156 horse race or dog race meetings shall also be entitled to  
157 retain the legitimate breakage, which shall be made and  
158 calculated to the dime, and from such breakage, the licensee  
159 of a horse race meeting (excluding dog race meetings), shall  
160 deposit daily fifty percent of the total of such breakage  
161 retained by the licensee into the special fund created  
162 pursuant to the provisions of subdivision (1), subsection (b)  
163 of this section for the payment of regular purses.

164 (d) The director of audit, and any other auditors  
165 employed by the racing commission who shall also be  
166 certified public accountants or experienced public  
167 accountants, shall have free access to the space or enclosure  
168 where the pari-mutuel system of wagering is conducted or  
169 calculated at any horse or dog race meeting for the purpose  
170 of ascertaining whether or not the licensee is deducting and  
171 retaining only a commission as provided in this section and  
172 is otherwise complying with the provisions of this section.  
173 They shall also, for the same purposes only, have full and  
174 free access to all records and papers pertaining to such  
175 pari-mutuel system of wagering, and shall report to the  
176 racing commission in writing, under oath, whether or not  
177 the licensee has deducted and retained any commission in  
178 excess of that permitted under the provisions of this section  
179 or has otherwise failed to comply with the provisions of this  
180 section.

181 (e) No licensee shall permit or allow any individual  
182 under the age of eighteen years to wager at any horse or dog  
183 racetrack, knowing or having reason to believe that such  
184 individual is under the age of eighteen years.

185 (f) Notwithstanding the foregoing provisions of  
186 subdivision (1), subsection (b) of this section, to the con-  
187 trary, a thoroughbred licensee qualifying for and paying  
188 the alternate reduced tax on pari-mutuel pools provided in

189 section ten of this article shall distribute the commission  
190 authorized to be deducted by subdivision (1), subsection  
191 (b), section nine of this article as follows: (i) The licensee  
192 shall pay the alternate reduced tax provided in section ten  
193 of this article; (ii) shall pay one tenth of one percent of such  
194 pari-mutuel pools into the general fund of the county  
195 commission of the county in which the racetrack is located,  
196 except if within a municipality, then to such municipal  
197 general fund; (iii) one half of the remainder of the  
198 commission shall be paid into the special fund established  
199 by the licensee and to be used for the payment of regular  
200 purses offered for thoroughbred racing by the licensee; and  
201 (iv) the amount remaining after the payments required  
202 above shall be retained by the licensee.

PART VII. TAXATION OF HORSE RACING AND PARI-MUTUEL  
WAGERING; DISPOSITION OF REVENUES.

**§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes  
paid; alternate tax; credits.**

- 1 (a) Any racing association conducting thoroughbred  
2 racing at any horse racetrack in this state shall pay each day  
3 upon which horse races are run a daily license tax of two  
4 hundred fifty dollars. Any racing association conducting  
5 harness racing at any horse racetrack in this state shall pay  
6 each day upon which horse races are run a daily license tax  
7 of one hundred fifty dollars. Any racing association  
8 conducting dog races shall pay each day upon which dog  
9 races are run a daily license tax of one hundred fifty dollars.  
10 In the event thoroughbred racing, harness racing, dog  
11 racing, or any combination of the foregoing are conducted  
12 on the same day at the same racetrack by the same racing  
13 association, only one daily license tax in the amount of two  
14 hundred fifty dollars shall be paid for that day. Any such  
15 daily license tax shall not apply to any local, county or state  
16 fair, horse show or agricultural or livestock exposition at  
17 which horse racing is conducted for not more than six days.
- 18 (b) Any racing association licensed by the racing  
19 commission to conduct thoroughbred racing and  
20 permitting and conducting pari-mutuel wagering under the  
21 provisions of this article shall, in addition to the

22 aforementioned daily license tax, pay to the racing  
23 commission, from the commission deducted each day by  
24 such licensee from the pari-mutuel pools on thoroughbred  
25 racing, a tax calculated on the total daily contribution of all  
26 such pari-mutuel pools conducted or made at any and every  
27 thoroughbred race meeting of the licensee licensed under  
28 the provisions of this article, which tax, on the pari-mutuel  
29 pools conducted or made each day during the months of  
30 January, February, March, October, November and  
31 December shall, from the effective date of this section and  
32 for fiscal year one thousand nine hundred eighty-five, be  
33 calculated at two and six-tenths percent; for fiscal year one  
34 thousand nine hundred eighty-six, be calculated at two and  
35 three-tenths percent; for fiscal year one thousand nine  
36 hundred eighty-seven, be calculated at two percent of such  
37 pool; for fiscal year one thousand nine hundred eighty-eight,  
38 be calculated at one and one-half percent; and for fiscal year  
39 one thousand nine hundred eighty-nine, and each year  
40 thereafter, be calculated at one percent of such pool; and, on  
41 the pari-mutuel pools conducted or made each day during  
42 all other months, shall, from the effective date of this section  
43 and for fiscal year one thousand nine hundred eighty-five, be  
44 calculated at three and six-tenths percent; for fiscal year one  
45 thousand nine hundred eighty-six, be calculated at three and  
46 three-tenths percent; for fiscal year one thousand nine  
47 hundred eighty-seven, be calculated at three percent of such  
48 pool; for fiscal year one thousand nine hundred eighty-eight,  
49 be calculated at two and one-half percent; and for fiscal year  
50 one thousand nine hundred eighty-nine, be calculated at two  
51 percent of such pool: *Provided*, That any such racing  
52 association operating a horse racetrack in this state having  
53 an average daily pari-mutuel pool on horse racing of two  
54 hundred eighty thousand dollars or less per day for the race  
55 meetings of the preceding calendar year shall, in lieu of  
56 payment of the pari-mutuel pool tax, calculated as  
57 hereinbefore in this subsection provided, be permitted to  
58 conduct pari-mutuel wagering at such horse racetrack on  
59 the basis of a daily pari-mutuel pool tax fixed as follows: On  
60 the daily pari-mutuel pool not exceeding three hundred  
61 thousand dollars the daily pari-mutuel pool tax shall be two  
62 thousand dollars plus the otherwise applicable percentage  
63 rate imposed by this subsection of the daily pari-mutuel

64 pool, if any, in excess of three hundred thousand dollars:  
65 *Provided, however,* That if an association or licensee  
66 qualifying for the foregoing alternate tax conducts more  
67 than one racing performance, each consisting of up to ten  
68 races in a calendar day, such association or licensee shall pay  
69 both the daily license tax imposed in subsection (a) and the  
70 foregoing alternate tax for each such performance:  
71 *Provided further,* That a licensee qualifying for the  
72 foregoing alternate tax is excluded from participation in the  
73 fund established by section thirteen-b of this article.

74 (c) Any racing association licensed by the racing  
75 commission to conduct harness racing and permitting and  
76 conducting pari-mutuel wagering under the provisions of  
77 this article shall, in addition to the aforementioned daily  
78 license tax, pay to the racing commission, from the  
79 commission deducted each day by the licensee from the  
80 pari-mutuel pools on harness racing, as a tax, three percent  
81 of the first one hundred thousand dollars wagered, or any  
82 part thereof; four percent of the next one hundred fifty  
83 thousand dollars; and five and three-fourths percent of all  
84 over that amount wagered each day in all such pari-mutuel  
85 pools conducted or made at any and every harness race  
86 meeting of the licensee licensed under the provisions of this  
87 article.

88 (d) Any racing association licensed by the racing  
89 commission to conduct dog racing and permitting and  
90 conducting pari-mutuel wagering under the provisions of  
91 this article shall, in addition to the aforementioned daily  
92 license tax, pay to the racing commission, from the  
93 commission deducted each day by such licensee from the  
94 pari-mutuel pools on dog racing, as a tax, four percent of  
95 the first fifty thousand dollars or any part thereof of such  
96 pari-mutuel pools, five percent of the next fifty thousand  
97 dollars of such pari-mutuel pools, six percent of the next  
98 one hundred thousand dollars of such pari-mutuel pools,  
99 seven percent of the next one hundred fifty thousand  
100 dollars of such pari-mutuel pools, and eight percent of all  
101 over three hundred fifty thousand dollars wagered each  
102 day.

103 (e) All daily license and pari-mutuel pools tax payments



104 required under the provisions of this section shall be made  
105 to the racing commission or its agent after the last race of  
106 each day of each horse or dog race meeting, and the pari-  
107 mutuel pools tax payments shall be made from all  
108 contributions to all pari-mutuel pools to each and every  
109 race of the day.

110 (f) Every association of licensee subject to the provisions  
111 of this article, including the changed provisions of sections  
112 nine and ten hereof, shall annually submit to the racing  
113 commission and the Legislature financial statements,  
114 including a balance sheet, income statement, statement of  
115 change in financial position and an audit of any electronic  
116 data system used for pari-mutuel tickets and betting,  
117 prepared in accordance with generally accepted auditing  
118 standards, as certified by an experienced public accountant  
119 or a certified public accountant.

**§19-23-13. Disposition of funds for payment of outstanding  
and unredeemed pari-mutuel tickets; publication  
of notice; irredeemable tickets; stake races for dog  
tracks.**

1 (a) All moneys held by any licensee for the payment of  
2 outstanding and unredeemed pari-mutuel tickets, if not  
3 claimed within ninety days after the close of the horse or  
4 dog race meeting in connection with which the tickets were  
5 issued, shall be turned over by the licensee to the racing  
6 commission within fifteen days after the expiration of such  
7 ninety-day period, and the licensee shall give such  
8 information as the racing commission may require  
9 concerning such outstanding and unredeemed tickets. All  
10 such moneys shall be deposited by the racing commission in  
11 a banking institution of its choice in a special account to be  
12 known as "West Virginia Racing Commission Special  
13 Account—Unredeemed Pari-Mutuel Tickets." Notice of  
14 the amount, date and place of such deposit shall be given by  
15 the racing commission, in writing, to the state treasurer.  
16 The racing commission shall then cause to be published a  
17 notice to the holders of such outstanding and unredeemed  
18 pari-mutuel tickets, notifying them to present such tickets  
19 for payment at the principal office of the racing commission  
20 within ninety days from the date of the publication of such

21 notice. Such notice shall be published within fifteen days  
22 following the receipt of said moneys by the commission  
23 from the licensee as a Class I legal advertisement in  
24 compliance with the provisions of article three, chapter  
25 fifty-nine of this code, and the publication area for such  
26 publication shall be the county in which such horse or dog  
27 race meeting was held.

28 (b) Any such pari-mutuel tickets that shall not be  
29 presented for payment within ninety days from the date of  
30 the publication of the notice shall thereafter be  
31 irredeemable, and the moneys theretofore held for the  
32 redemption of such pari-mutuel tickets shall become the  
33 property of the racing commission, and shall be expended  
34 as follows:

35 (1) To the owner of the winning horse in any horse race  
36 at a horse race meeting held or conducted by any licensee,  
37 provided that the owner of such horse is at the time of such  
38 horse race a bona fide resident of this state, a sum equal to  
39 ten percent of the purse won by such horse. The commission  
40 may require proof that the owner was, at the time of the  
41 race, a bona fide resident of this state. Upon proof by the  
42 owner that he filed a personal income tax return in this state  
43 for the previous two years and that he owned real or  
44 personal property in this state and paid taxes in this state on  
45 said property for the two previous years, he shall be  
46 presumed to be a bona fide resident of this state; and

47 (2) To the breeder (that is, the owner of the mare) of the  
48 winning horse in any horse race at a horse race meeting held  
49 or conducted by any licensee, provided that the mare  
50 foaled in this state, a sum equal to ten percent of the purse  
51 won by such horse; and

52 (3) To the owner of the stallion which sired the winning  
53 horse in any horse race at a horse race meeting held or  
54 conducted by any licensee, provided that the mare which  
55 foaled such winning horse was served by a stallion standing  
56 and registered in this state, a sum equal to ten percent of the  
57 purse won by such horse; and

58 (4) When the moneys in the special account, known as  
59 the "West Virginia Racing Commission Special Account—  
60 Unredeemed Pari-Mutuel Tickets," will more than satisfy

61 the requirements of subdivisions (1), (2) and (3), subsection  
62 (b) of this section, the West Virginia racing commission  
63 shall have the authority to expend the excess moneys from  
64 unredeemed horse racing pari-mutuel tickets as purse  
65 money in any race conditioned exclusively for West  
66 Virginia bred or sired horses, and to expend the excess  
67 moneys from unredeemed dog racing pari-mutuel tickets in  
68 supplementing purses and establishing stake races and dog  
69 racing handicaps at the dog tracks.

70 (c) Nothing contained in this article shall prohibit one  
71 person from qualifying for all or more than one of the  
72 aforesaid awards, or for awards under section thirteen-b of  
73 this article.

74 (d) The cost of publication of the notice provided for in  
75 this section shall be paid from the funds in the hands of the  
76 state treasurer collected from the pari-mutuel pools tax  
77 provided for in section ten of this article, when not  
78 otherwise provided in the budget; but no such costs shall be  
79 paid unless an itemized account thereof, under oath, be first  
80 filed with the state auditor.

**§19-23-13b. West Virginia thoroughbred development fund;  
distribution; restricted races; nonrestricted  
purse supplements.**

1 The racing commission shall deposit moneys required to  
2 be withheld by an association or licensee in subsection (b),  
3 section nine of this article in a banking institution of  
4 its choice in a special account to be known as "West Vir-  
5 ginia Racing Commission Special Account—West Virginia  
6 Thoroughbred Development Fund." Notice of the amount,  
7 date and place of such deposit shall be given by the racing  
8 commission, in writing, to the state treasurer. The purpose  
9 of the fund is to promote better breeding and racing of  
10 thoroughbred horses in the state through awards and  
11 purses for accredited breeders/raisers, sire owners and  
12 thoroughbred race horse owners. A further objective of the  
13 fund is to aid in the rejuvenation and development of the  
14 present horse tracks now operating in West Virginia for  
15 capital improvements, operations or increased purses  
16 between the first day of July, one thousand nine hundred

17 eighty-four, and the thirty-first day of October, one  
18 thousand nine hundred ninety-two.

19 The fund shall be established forthwith and operate on an  
20 annual basis.

21 (a) Funds will be expended for awards and purses in the  
22 following manner:

23 (i) Fifteen percent of the fund shall be available for  
24 distribution for events taking place between the first day of  
25 July, one thousand nine hundred eighty-four, and the  
26 thirty-first day of December, one thousand nine hundred  
27 eighty-five;

28 (ii) Fifty percent of the fund shall be available for  
29 distribution for events taking place between the first day of  
30 January, one thousand nine hundred eighty-six, and the  
31 thirty-first day of December, one thousand nine hundred  
32 eighty-six;

33 (iii) Seventy-five percent of the fund shall be available  
34 for distribution for events taking place between the first  
35 day of January, one thousand nine hundred eighty-seven,  
36 and the thirty-first day of December, one thousand nine  
37 hundred eighty-seven; and

38 (iv) One hundred percent of the fund shall be available  
39 thereafter.

40 (b) Awards and purses will be distributed as follows:

41 (i) The breeders/raisers of accredited thoroughbred  
42 horses that earn a purse at any West Virginia meet will  
43 receive a bonus award calculated at the end of the year as a  
44 percentage of the fund dedicated to the breeders/raisers,  
45 which shall be sixty percent of the fund available for  
46 distribution in any one year. The total amount available for  
47 the breeders'/raisers' awards shall be distributed according  
48 to the ratio of purses earned by an accredited race horse to  
49 the total amount earned in such races by all accredited race  
50 horses for that year as a percentage of the fund dedicated to  
51 the breeders/raisers. However, no breeder/raiser may  
52 receive from the fund dedicated to breeders'/raisers'  
53 awards an amount in excess of the earnings of the

54 accredited horse at West Virginia meets. In addition, should  
55 a horse's breeder and raiser qualify for the same award on  
56 the same horse, they will each be awarded one half of the  
57 proceeds. Of the funds available for distribution in any one  
58 year to breeders/raisers, neither the breeders as a group nor  
59 the raisers as a group shall, until January first, one  
60 thousand nine hundred ninety-four, qualify for more than  
61 sixty and one-tenth percent of such funds.

62 (ii) The owner of a West Virginia sire of an accredited  
63 thoroughbred horse that earns a purse in any race at a West  
64 Virginia meet will receive a bonus award calculated at the  
65 end of the year as a percentage of the fund dedicated to sire  
66 owners, which shall be fifteen percent of the fund available  
67 for distribution in any one year. The total amount available  
68 for the sire owners' awards shall be distributed according to  
69 the ratio purses earned by the progeny of accredited West  
70 Virginia stallions in such races for a particular stallion to  
71 the total purses earned by the progeny of all accredited  
72 West Virginia stallions in such races. However, no sire  
73 owner may receive from the fund dedicated to sire owners  
74 an amount in excess of thirty percent of the accredited  
75 earnings for each sire.

76 (iii) The owner of an accredited thoroughbred horse that  
77 earns a purse in any race at a West Virginia meet will receive  
78 a restricted purse supplement award calculated at the end  
79 of the year, which shall be twenty-five percent of the fund  
80 available for distribution in any one year, based on the ratio  
81 of the earnings in such races of a particular race horse to the  
82 total amount earned by all accredited race horses in such  
83 races during that year as a percentage of the fund dedicated  
84 to purse supplements. However, the owners may not receive  
85 from the fund dedicated to purse supplements an amount in  
86 excess of forty percent of the total accredited earnings for  
87 each accredited race horse.

88 (iv) In no event shall purses earned at a meet held at a track  
89 which did not make a contribution to the thoroughbred  
90 development fund out of the daily pool on the day the meet  
91 was held, qualify or count toward eligibility for an award  
92 under this section.

93 (v) Any balance in the breeders/raisers, sire owners and

94 purse supplement funds after yearly distributions shall  
95 revert back into the general account of the fund for  
96 distribution in the next year.

97 Distributions shall be made on the fifteenth of each  
98 February for the preceding year's achievements.

99 (c) The remainder, if any, of the fund that is not  
100 available for distribution in the above program in any one  
101 year is reserved for regular purses, marketing expenses and  
102 for capital improvements in the amounts and under the  
103 conditions provided hereinafter. Fifty percent of such  
104 remainder shall be reserved for payments into the regular  
105 purse fund established in subsection (b), section nine of:  
106 this article. Up to five hundred thousand dollars per year  
107 shall be available for (1) capital improvements at the  
108 eligible licensed horse racing tracks in the state, and (2)  
109 marketing and advertising programs above and beyond two  
110 hundred fifty thousand dollars for the eligible licensed  
111 horse racing tracks in the state: *Provided*, That moneys  
112 shall be expended for capital improvements or marketing  
113 and advertising purposes as described above only in accord  
114 with a plan filed with and receiving the prior approval of  
115 the racing commission, and on a basis of fifty percent  
116 participation by the licensee and fifty percent participation  
117 by moneys from the fund, in the total cost of approved  
118 projects: *Provided, however*, That funds approved for one  
119 track may not be used at another track unless the first track  
120 ceases to operate or is viewed by the commission as  
121 unworthy of additional investment due to financial or  
122 ethical reasons.

123 (d) Each pari-mutuel thoroughbred horse track shall  
124 provide at least the following restricted races in accordance  
125 with the following time schedules:

126 (i) July first, one thousand nine hundred eighty-four, to  
127 December thirty-first, one thousand nine hundred eighty-  
128 four—one restricted race per eight racing days;

129 (ii) January first, one thousand nine hundred eighty-  
130 five, to December thirty-first, one thousand nine hundred  
131 eighty-five—one restricted race per seven racing days;

132 (iii) January first, one thousand nine hundred eighty-

133 six, to December thirty-first, one thousand nine hundred  
134 eighty-six—one restricted race per six racing days;

135 (iv) January first, one thousand nine hundred eighty-  
136 seven, to December thirty-first, one thousand nine hundred  
137 eighty-seven—one restricted race per five racing days;

138 (v) January first, one thousand nine hundred eighty-  
139 eight, to December thirty-first, one thousand nine hundred  
140 eighty-eight—one restricted race per four racing days;

141 (vi) January first, one thousand nine hundred eighty-  
142 nine, to December thirty-first, one thousand nine hundred  
143 eighty-nine—one restricted race per three racing days; and

144 (vii) Thereafter, one restricted race per two racing days.

145 Restricted races shall be funded by each racing  
146 association from moneys placed in the general purse fund.  
147 The purses shall be twenty percent larger than the purses  
148 for similar type races at each track. The racing schedules,  
149 purse amounts and types of races are subject to the approval  
150 of the West Virginia racing commission.

151 (e) No association or licensee qualifying for the  
152 alternate tax provision of subsection (b), section ten of  
153 this article shall be eligible for participation in any of the  
154 provisions of this section.

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## CHAPTER 91

(S. B. 679—By Senator Tucker)

[Passed March 10, 1984: in effect ninety days from passage. Approved by the Governor.]

**AN ACT** to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-i, relating to the licensing of hospices; purpose; definitions; application; fees; inspections; suspension; revocation; rules and regulations; violations; penalties and injunctions.

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

That the code of West Virginia, one thousand nine hundred

thirty-one, as amended, be amended by adding thereto a new article, designated article five-i, to read as follows:

**ARTICLE 5I. HOSPICE LICENSURE ACT.**

§16-5I-1. Purpose of short title.

§16-5I-2. Definitions.

§16-5I-3. Hospices to obtain license; application; fees and inspections.

§16-5I-4. Suspension; revocation.

§16-5I-5. State board of health to establish rules and regulations.

§16-5I-6. Violations; penalties; injunction.

**§16-5I-1. Purpose and short title.**

1 This article shall be known as the "Hospice Licensure  
2 Act." The purpose of this act is to establish licensing  
3 requirements for hospices. It is the intent of the Legislature  
4 to establish, promote and make available within this state a  
5 comprehensive hospice care program for the treatment of  
6 physical, emotional and mental symptoms of terminal  
7 illness, as described in article five-d, chapter sixteen of this  
8 code.

**§16-5I-2. Definitions.**

1 (a) "Bereavement services" means support services  
2 designed to assist individuals to experience, respond  
3 emotionally to and adjust to the death of another person.

4 (b) "Director" means the director of the West Virginia  
5 department of health.

6 (c) "Hospice" means a coordinated program of home  
7 and inpatient care provided directly or through an  
8 agreement under the direction of an identifiable hospice  
9 administration which provides palliative and supportive  
10 medical and other health services to terminally ill  
11 individuals and their families. Hospice utilizes a medically  
12 directed interdisciplinary team. A hospice program of care  
13 provides care to meet the physical, psychological, social,  
14 spiritual and other special needs which are experienced  
15 during the final stages of illness, and during dying and  
16 bereavement.

17 (d) "Interdisciplinary team" means the hospice client  
18 and the client's family, the attending physician and the  
19 following hospice personnel: Physician, nurse, social



20 worker, clergy and trained volunteer. Providers of  
21 supportive services such as mental health, pharmaceutical  
22 and any other appropriate allied health services may also be  
23 included on the team as the needs of the individual dictate.

24 (e) "Palliative services" means treatment directed at  
25 controlling pain, relieving other symptoms and focusing on  
26 the special needs of the individual and family as they  
27 experience the stress of the dying process, rather than  
28 treatment designed for investigation and intervention for  
29 the purpose of cure or prolongation of life.

30 (f) "Terminally ill" means that an individual has a  
31 medical prognosis that his life expectancy is six months or  
32 less.

33 (g) The board of health may define in regulation any  
34 term or phrase used in this article which is not expressly  
35 defined.

**§16-5I-3. Hospices to obtain license; application; fees and inspections.**

1 (a) No person, partnership, association or corporation,  
2 or any governmental unit or any division, department,  
3 board or agency thereof may operate a hospice unless such  
4 operation first obtains a license from the state director of  
5 health in accordance with the provisions of this article and  
6 the rules and regulations lawfully promulgated hereunder:  
7 *Provided*, That this section shall not prevent any hospice  
8 which has been or is granted a certificate of need, as defined  
9 in article two-d of this chapter from operating until such  
10 time as the rules and regulations required by section four of  
11 this article become effective and the director grants or  
12 denies an application for a license filed by such hospice.  
13 Any hospice in operation prior to the effective date of such  
14 rules and regulations which desires to continue operating as  
15 a hospice shall apply for a license under this article within  
16 thirty days after the date such rules and regulations become  
17 effective.

18 (b) Any person, partnership, association or corporation  
19 or any governmental unit or any division, department,  
20 board or agency thereof desiring a license hereunder shall

21 file with the director an application in such form as the  
22 director shall prescribe and furnish accompanied by a fee to  
23 be determined by the board of health, based upon the  
24 number of persons served by the hospice. The director shall  
25 inspect the hospice prior to issuing a license. Upon receipt  
26 and review of an application for license, the director shall  
27 issue a license if the hospice is in compliance with the  
28 provisions of this article and with the rules and regulations  
29 lawfully promulgated hereunder. The license is not  
30 transferable or assignable.

31 (c) A license shall expire one year from the date of  
32 issuance. Sixty days prior to the expiration date, an  
33 application for renewal shall be submitted on forms  
34 furnished by the director. A license shall be renewed if the  
35 director determines that the applicant is in compliance with  
36 this article and with all rules promulgated hereunder.

37 (d) The director shall inspect all hospices that are  
38 subject to rules adopted pursuant to this article no less than  
39 annually in order to determine compliance with the  
40 provisions of this article and with rules and regulations  
41 adopted hereunder.

**§16-5I-4. Suspension; revocation.**

1 (a) The director is authorized to suspend or revoke a  
2 license issued hereunder if the provisions of this article or of  
3 the rules and regulations are violated.

4 (b) Before any such license is suspended or revoked,  
5 however, written notice shall be given the licensee, stating  
6 the grounds of the complaint, and the date, time and place  
7 set for the hearing on the complaint, which date shall not be  
8 less than thirty days from the time notice is given. Such  
9 notice shall be sent by registered mail to the licensee at the  
10 address where the hospice concerned is located. The  
11 licensee shall be entitled to be represented by legal counsel  
12 at the hearing.

13 (c) If a license is revoked as herein provided, a new  
14 application for a license shall be considered by the director  
15 if, when and after, the conditions upon which revocation  
16 was based have been corrected and evidence of this fact has  
17 been furnished. A new license shall then be granted after

18 proper inspection has been made and all provisions of this  
19 article and rules and regulations promulgated hereunder  
20 have been satisfied.

21 (d) All of the pertinent provisions of article five, chapter  
22 twenty-nine-a of this code shall apply to and govern any  
23 hearing authorized and required by the provisions of this  
24 article, and the administrative procedure in connection  
25 with and following any such hearing, with like effect as if  
26 the provisions of said article five were set forth in extenso in  
27 this section.

28 (e) Any applicant or licensee who is dissatisfied with the  
29 decision of the director as a result of the hearing provided in  
30 this section may, within thirty days after receiving notice of  
31 the decision, appeal to the circuit court, in term or in  
32 vacation, of Kanawha County for judicial review of the  
33 decision.

34 (f) The court may affirm, modify or reverse the decision  
35 of the director and either the applicant or licensee or the  
36 director may appeal from the court's decision to the  
37 supreme court of appeals.

**§16-51-5. State board of health to establish rules and regulations.**

1 The state board of health, after soliciting the advice and  
2 recommendations of the West Virginia continuum of care  
3 board, shall promulgate reasonable rules and regulations  
4 for the licensure of hospice programs as it finds necessary in  
5 order to ensure adequate care, treatment, health, safety,  
6 welfare and comfort of hospice patients. These rules and  
7 regulations shall include, but not be limited to:

8 (a) The qualifications and supervision of licensed and  
9 nonlicensed personnel;

10 (b) The provision and coordination of inpatient care and  
11 in-home treatment services, including the development of a  
12 written plan of care;

13 (c) The management, operation, staffing and equipping  
14 of the hospice program;

15 (d) The clinical and business records kept by the  
16 hospice;

17 (e) The procedures for the review of utilization and  
18 quality of patient care; and

19 (f) Such other requirements as the board of health  
20 determines to be appropriate.

**§16-5I-6. Violations; penalties; injunction.**

1 (a) Any person, partnership, association or corporation  
2 and any local governmental unit or any division,  
3 department, board or agency thereof which establishes,  
4 conducts, manages or operates a hospice without first  
5 obtaining a license therefor as herein provided, or which  
6 violates any provisions of this article or any rule or  
7 regulation lawfully promulgated thereunder, shall be guilty  
8 of a misdemeanor, and, upon conviction thereof, shall for  
9 the first offense be fined not more than one hundred dollars,  
10 or imprisoned in the county jail for not more than ninety  
11 days, or both fined and imprisoned. For each subsequent  
12 offense the fine may be increased to not more than five  
13 hundred dollars, with imprisonment in the county jail for  
14 not more than ninety days, or by both such fine and  
15 imprisonment. Each day of continuing violation after  
16 conviction shall be considered a separate offense.

17 (b) Notwithstanding the existence or pursuit of any  
18 other remedy, the director may, in the manner provided by  
19 law, maintain an action in the name of the state for an  
20 injunction against any person, partnership, association,  
21 corporation or any governmental unit or any division,  
22 department, board or agency thereof, to restrain or prevent  
23 the establishment, conduct, management or operation of  
24 any hospice or violation of any provisions of this article or  
25 any rule or regulation lawfully promulgated thereunder,  
26 without first obtaining a license therefor in the manner  
27 hereinbefore provided.

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## CHAPTER 92

(Com. Sub. for S. B. 585—By Senator Chace and Senator Tonkovich)

[Passed March 8, 1984; in effect July 1, 1984. Approved by the Governor.]

**AN ACT** to amend chapter sixteen of the code of West Virginia,  
one thousand nine hundred thirty-one, as amended, by

adding thereto a new article, designated article twenty-nine-a, relating to creation of the West Virginia hospital finance authority and the board thereof; the powers of said authority, including the power to lend money to hospitals for the acquisition or construction of hospital facilities, which include capital improvements and equipment, or for refinancing hospital indebtedness; the power to borrow money and issue bonds or notes, including refunding bonds or notes, to accomplish the purposes of the authority; power to enter into loan agreements; contracts, indentures, security agreements and other agreements, which may include provisions for the appointment of receivers; exemption from taxation of property of the authority and of any bonds or notes, and the interest thereon, issued by the authority; and other rights, powers and duties of the authority.

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

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

**ARTICLE 29A. WEST VIRGINIA HOSPITAL FINANCE AUTHORITY ACT.**

- § 16-29A-1. Short title.
- § 16-29A-2. Declaration of policy and responsibility; purpose and intent of article; findings.
- § 16-29A-3. Definitions.
- § 16-29A-4. Creation of authority and board; status and members of board.
- § 16-29A-5. Powers of authority.
- § 16-29A-6. Hospital loans.
- § 16-29A-7. Bonds and notes.
- § 16-29A-8. Trustee for bondholders; contents of trust agreement.
- § 16-29A-9. Use of funds by authority; restrictions thereon.
- § 16-29A-10. Security for bonds and notes.
- § 16-29A-11. Enforcement of payment and validity of bonds and notes.
- § 16-29A-12. Pledges; time; liens; recordation.
- § 16-29A-13. Refunding bonds.
- § 16-29A-14. Purchase and cancellation of notes or bonds.
- § 16-29A-15. Vested rights; impairment.
- § 16-29A-16. Bonds and notes not debt of state, county, municipality or any political subdivision; expenses incurred pursuant to article.
- § 16-29A-17. Negotiability of bonds and notes.

- §16-29A-18. Bonds and notes legal investments.
- §16-29A-19. Exemption from taxation.
- §16-29A-20. Certificate of need.
- §16-29A-21. Nondiscrimination; hospital facilities.
- §16-29A-22. Personal liability; persons executing bonds or notes.
- §16-29A-23. Financial interest in contracts prohibited; penalty.
- §16-29A-24. Meetings and records of authority to be kept public.
- §16-29A-25. Cumulative authority as to powers conferred; applicability of other statutes and charters.
- §16-29A-26. Liberal construction.

**§16-29A-1. Short title.**

- 1 This article shall be known and may be cited as the “West
- 2 Virginia Hospital Finance Authority Act.”

**§16-29A-2. Declaration of policy and responsibility; purpose and intent of article; findings.**

1 It is hereby declared to be the public policy of the state of  
2 West Virginia and a responsibility of the state of West  
3 Virginia, for the benefit of the people of the state and the  
4 improvement of their health, welfare and living conditions,  
5 to provide hospitals within the state with appropriate  
6 means at reasonable cost to maintain, expand, enlarge and  
7 establish health care, hospital and other related facilities  
8 and to provide hospitals with the ability to refinance  
9 indebtedness. This article shall provide a method to enable  
10 hospitals in the state to provide or maintain at reasonable  
11 cost pursuant to reasonable terms the facilities, structures  
12 and services needed to accomplish the purposes of this  
13 article, all to the public benefit and good, to the extent and  
14 in the manner provided in this article.

15 The Legislature finds and hereby declares that the  
16 responsibility of the state as outlined above cannot be  
17 effectively met without the hospital loan program as  
18 provided for in this article.

**§16-29A-3. Definitions.**

- 1 As used in this article, unless the context clearly requires
- 2 a different meaning:

- 3 (1) “Authority” means the West Virginia hospital
- 4 finance authority created by section four of this article, the
- 5 duties, powers, responsibilities and functions of which are
- 6 specified in this article;

- 7 (2) "Board" means the West Virginia hospital finance  
8 board created by section four of this article, which shall  
9 manage and control the authority;
- 10 (3) "Bond" means a revenue bond issued by the  
11 authority to effect the purposes of this article;
- 12 (4) "Construction" means and includes reconstruction,  
13 enlargement, improvement and providing furnishings or  
14 equipment;
- 15 (5) "Direct provider of health care" means a person or  
16 organization whose primary current activity is the  
17 provision of health care to individuals and includes a  
18 licensed or certified physician, osteopath, dentist, nurse,  
19 podiatrist or physician's assistant or an organization  
20 comprised of these health professionals or employing these  
21 health professionals;
- 22 (6) "Hospital" means a corporation, association,  
23 institution or establishment located within the state for the  
24 care of those who require medical treatment, which may be  
25 a public or private corporation or association. "Hospital"  
26 specifically includes corporations or other organizations  
27 engaged solely in some phase of hospital activity or in  
28 providing a supporting service to hospitals or public or  
29 private nonprofit corporations which operate or own  
30 hospital facilities;
- 31 (7) "Hospital facilities" means any real or personal  
32 property suitable and intended for, or incidental or  
33 ancillary to, use by a hospital and includes: Outpatient  
34 clinics; laboratories; laundries; nurses, doctors or interns  
35 residences; administration buildings; facilities for research  
36 directly involved with hospital care; maintenance, storage  
37 or utility facilities; parking lots and garages; and all  
38 necessary, useful or related equipment, furnishings and  
39 appurtenances and all lands necessary or convenient as a  
40 site for the foregoing and specifically includes any capital  
41 improvements to any of the foregoing. "Hospital facilities"  
42 specifically includes office facilities not less than eighty  
43 percent of which are intended for lease to direct providers  
44 of health care and which are geographically or functionally  
45 related to one or more other hospital facilities, if the  
46 authority determines that the financing of the office

47 facilities is necessary to accomplish the purposes of this  
48 article;

49 (8) "Hospital loan" means a loan made by the authority  
50 to a hospital;

51 (9) "Note" means a short-term promise to pay a  
52 specified amount of money, payable and secured as  
53 provided pursuant to this article and issued by the  
54 authority to effect the purposes of this article;

55 (10) "Project costs" means the total of the reasonable or  
56 necessary costs incurred for carrying out the works and  
57 undertakings for the acquisition or construction of hospital  
58 facilities under this article. "Project costs" includes, but is  
59 not limited to, all of the following costs: The costs of  
60 acquisition or construction of the hospital facilities; studies  
61 and surveys; plans, specifications, architectural and  
62 engineering services; legal, organization, marketing or  
63 other special services; financing, acquisition, demolition,  
64 construction, equipping and site development of new and  
65 rehabilitated buildings; rehabilitation, reconstruction,  
66 repair or remodeling of existing buildings; interest and  
67 carrying charges during construction and before full  
68 earnings are achieved and operating expenses before full  
69 earnings are achieved or a period of one year following the  
70 completion of construction, whichever occurs first, and a  
71 reasonable reserve for payment of principal of and interest  
72 on bonds or notes of the authority. "Project costs" shall also  
73 include reimbursement of a hospital for the foregoing costs  
74 expended by a hospital from its own funds or from money  
75 borrowed by the hospital for such purposes before issuance  
76 and delivery of bonds or notes by the authority for the  
77 purpose of providing funds to pay the project costs. "Project  
78 costs" also specifically includes the refinancing of any  
79 existing debt of a hospital necessary in order to permit the  
80 hospital to borrow from the authority and give adequate  
81 security for the hospital loan. The determination of the  
82 authority with respect to the necessity of refinancing and  
83 adequate security for a hospital loan is conclusive; and

84 (11) "Revenue" means any money or thing of value  
85 collected by, or paid to, the authority as principal of or  
86 interest, charges or other fees on hospital loans, or any other



87 collections on hospital loans made by the authority to  
88 hospitals to finance in whole or in part the acquisition or  
89 construction of any hospital facilities, or other money or  
90 property which is received and may be expended for or  
91 pledged as revenues pursuant to this article.

**§16-29A-4. Creation of authority and board; status and members of board.**

1 The West Virginia hospital finance authority is hereby  
2 created. The authority is a body corporate and a  
3 governmental instrumentality of the state. The exercise by  
4 the authority of the powers conferred by this article and the  
5 carrying out of its purposes and duties shall be deemed and  
6 held to be, and are hereby determined to be, essential  
7 governmental functions and for a public purpose.

8 The authority shall be controlled, managed and operated  
9 by the seven-member board known as the West Virginia  
10 hospital finance board, which is hereby created. The board  
11 shall consist of the director of the state department of  
12 health and the state treasurer as members ex officio of the  
13 board. The other five members of the board shall be  
14 appointed by the governor, by and with the advice and  
15 consent of the Senate, and shall serve terms of two, three,  
16 four, five and six years, respectively. The successor of each  
17 such appointed member shall be appointed for a term of six  
18 years in the same manner as the original appointments were  
19 made, except that any person appointed to fill a vacancy  
20 occurring prior to the expiration of the term for which his  
21 predecessor was appointed shall be appointed only for the  
22 remainder of such term. No more than three of the  
23 appointed board members shall at any one time belong to  
24 the same political party. Appointed board members may be  
25 reappointed to serve additional terms.

26 All members of the board shall be citizens of the state.  
27 Each appointed member of the board, before entering upon  
28 his duties, shall comply with the requirements of article  
29 one, chapter six of this code and give bond in the sum of  
30 twenty-five thousand dollars in the manner provided in  
31 article two, chapter six of this code. The governor may  
32 remove any board member for cause as provided in article

33 six, chapter six of this code. The director of the state  
34 department of health and the state treasurer may each  
35 appoint a deputy to serve as a member of the board in their  
36 respective absences. Such deputy shall be a person in the  
37 office of the director of the state department of health or the  
38 state treasurer, as the case may be, and shall serve at his  
39 pleasure.

40 Four members of the board shall constitute a quorum,  
41 and the affirmative vote of four members shall be necessary  
42 for any action taken by vote of the board. No vacancy in the  
43 membership of the board shall impair the rights of a  
44 quorum by such vote to exercise all the rights and perform  
45 all the duties of the board and the authority.

46 Annually, the board shall elect one of its appointed  
47 members as chairman and another as vice chairman and  
48 shall appoint a secretary-treasurer, who need not be a  
49 member of the board. The person appointed as secretary-  
50 treasurer, including a board member if he is so appointed,  
51 shall give bond in the sum of fifty thousand dollars in the  
52 manner provided in article two, chapter six of this code.

53 Members of the board shall not receive compensation for  
54 services but shall be entitled to the necessary expenses,  
55 including traveling expenses, incurred in the discharge of  
56 their duties. Any payments for compensation and expenses  
57 shall be paid from the funds of the authority, after  
58 appropriations and authorization by the Legislature, and  
59 no liability or obligation shall be incurred by the authority  
60 beyond the extent to which moneys are available from  
61 funds of the authority.

62 There shall also be a director of the authority appointed  
63 by the board.

#### §16-29A-5. Powers of authority.

1 The authority is hereby granted, has and may exercise all  
2 the powers necessary or appropriate to carry out and  
3 effectuate the purposes of this article, including the  
4 following:

5 (a) To sue and be sued in its own name and plead and be  
6 impleaded in its own name; to have a seal and alter the same

7 at its pleasure; to make, execute and deliver contracts,  
8 indentures, agreements, conveyances and other  
9 instruments necessary or convenient to the exercise of its  
10 powers; to adopt and, from time to time, amend and repeal  
11 bylaws necessary and proper for the legislation of its  
12 business and rules and regulations to implement and make  
13 effective its powers and duties, such rules and regulations  
14 to be promulgated in accordance with the provisions of  
15 chapter twenty-nine-a of this code; and to maintain a  
16 principal office. Any actions against the authority shall be  
17 brought in the circuit court of Kanawha County, in which  
18 the principal office of the authority shall be located. When  
19 the cost under any contract or agreement to be entered by  
20 the authority, other than compensation for personal  
21 services, involves an expenditure of more than three  
22 thousand dollars, the authority shall make a written  
23 contract with the lowest responsible bidder after public  
24 notice published as a Class II legal advertisement in  
25 compliance with the provisions of article three, chapter  
26 fifty-nine of this code, and the publication area for such  
27 publication to be the county wherein the work is to be  
28 performed or which is affected by the contract, which  
29 notice shall state the general character of the work and the  
30 general character of the materials to be furnished, the place  
31 where plans and specifications therefor may be examined  
32 and the time and place of receiving bids: *Provided*, That a  
33 contract, indenture or agreement for a hospital loan is not  
34 subject to the foregoing requirements, and the authority  
35 may enter into such contract, indenture or agreement  
36 pursuant to negotiation and upon such terms and  
37 conditions and for such period as it finds to be reasonable  
38 and proper under the circumstances and as necessary to  
39 best effectuate the purposes of this article: *Provided*,  
40 *however*, That a contract or agreement entered into by a  
41 hospital to which any hospital loan is made is not subject to  
42 the foregoing requirements. The authority may reject any  
43 and all bids. A bond with good and sufficient surety,  
44 approved by the authority, shall be required of all  
45 contractors in an amount equal to at least fifty percent of  
46 the contract price, conditioned upon the faithful  
47 performance of the contract.

48 (b) To solicit and accept gifts, grants, loans and other  
49 aids from any person, corporation or governmental agency.

50 (c) To make hospital loans, to participate in the making  
51 of hospital loans, to undertake commitments, to execute  
52 and be the beneficiary under deeds of trust, to enter into  
53 security agreements, to sell hospital loans and the security  
54 therefor at public or private sale, to modify or alter hospital  
55 loans and security therefor, to discharge hospital loans and  
56 security therefor, to order a trustee's sale under a deed of  
57 trust or commence an action to protect or enforce a right  
58 conferred upon it by a law, deed of trust, hospital loan,  
59 contract, indenture or other agreement and to bid for and  
60 purchase property which was the subject of a deed of trust  
61 at a trustee's sale or at any other sale and to acquire or take  
62 possession of that property and in that event complete,  
63 administer, pay the principal of and interest on any  
64 obligations incurred in connection with such property,  
65 dispose of and otherwise deal with the property in a manner  
66 necessary or desirable to protect the interest of the  
67 authority in the property. The hospital loans made by the  
68 authority may be secured by deeds of trust or security  
69 agreements, as applicable, or not, as the authority  
70 determines.

71 (d) To lend money to hospitals for the purpose of  
72 refinancing any outstanding indebtedness of a hospital if  
73 the authority determines the refinancing is necessary to  
74 realize the purposes of this article. A hospital loan made  
75 pursuant to this subsection shall not exceed the amount of  
76 the principal of and interest and redemption premium, if  
77 any, on the indebtedness to be refinanced which has not  
78 been repaid, plus the marketing, financing, legal and other  
79 costs incurred in connection with the refinancing and the  
80 issuance of bonds or notes of the authority issued in whole  
81 or in part to provide funds to make the hospital loan  
82 described in this subdivision, including the costs of funding  
83 a bond reserve and paying capitalized interest on the bonds  
84 or notes for a period not to exceed one year after the  
85 issuance of such bonds or notes. The determination of the  
86 authority under this subsection shall be conclusive.

87 (e) To charge, impose and collect fees and charges in

88 connection with its hospital loans, commitments and  
89 servicing, including reimbursement of the costs of  
90 financing by the authority, service charges, insurance  
91 premiums and an allocable share of the operating expenses  
92 of the authority and to make provision for increasing the  
93 same, if necessary, as the authority determines is  
94 reasonable and approved by the board.

95 (f) To acquire, hold and dispose of real or personal  
96 property necessary or appropriate for the accomplishment  
97 of the purposes of this article.

98 (g) To procure insurance against a loss in connection  
99 with its property, assets or activities.

100 (h) To borrow money for its purpose, including its initial  
101 operating expense, and issue its bonds or notes for the  
102 money and provide for the rights of the holders of the bonds  
103 or notes and to secure the bonds or notes by a deed of trust  
104 on or an assignment or pledge of any or all of its properties,  
105 including any part of the security for its hospital loans. The  
106 state shall not be liable on any bonds or notes of the  
107 authority; the bonds or notes shall not be a debt of the state;  
108 and each bond or note shall contain on its face a statement  
109 to that effect.

110 (i) To invest any funds not required for immediate use or  
111 disbursement, at its discretion, in any of the following:

112 (1) Direct obligations of, or obligations the timely  
113 payment of the principal of and interest on which is  
114 guaranteed by, the United States of America;

115 (2) Bonds, debentures, notes or other evidences of  
116 indebtedness issued by any of the following agencies: Banks  
117 for cooperatives; federal intermediate credit banks; federal  
118 home loan bank system; Export-Import Bank of the United  
119 States; federal farm credit banks; federal land banks;  
120 federal financing banks; the Federal National Mortgage  
121 Association or the Government National Mortgage  
122 Association;

123 (3) Public housing bonds issued by public agencies or  
124 municipalities and fully secured as to the payment of both  
125 principal and interest by a pledge of annual contributions  
126 under an annual contributions contract or contracts with

127 the United States of America; or temporary notes issued by  
128 public agencies or municipalities or preliminary loan notes  
129 issued by public agencies or municipalities, in each case  
130 fully secured as to the payment of both principal and  
131 interest by a requisition or payment agreement with the  
132 United States of America;

133 (4) Certificates of deposit secured by obligations of the  
134 type specified in subparagraph (1);

135 (5) Direct obligations of, or obligations the timely  
136 payment of the principal of and interest on which is  
137 guaranteed by, the state of West Virginia;

138 (6) Direct and general obligations of any other state  
139 within the territorial United States, to the payment of the  
140 principal of and interest on which the full faith and credit of  
141 such state is pledged: *Provided*, That at the time of their  
142 purchase, such obligations are rated in either of the two  
143 highest rating categories by a nationally recognized bond  
144 rating agency;

145 (7) Any fixed interest bond, note or debenture of any  
146 corporation organized and operating within the United  
147 States: *Provided*, That such corporation has a minimum net  
148 worth of fifteen million dollars and its securities or its  
149 parent corporation's securities are listed on one or more of  
150 the national stock exchanges: *Provided, however*, That (i)  
151 such corporation has earned a profit in eight of the  
152 preceding ten fiscal years as reflected in its statements, (ii)  
153 such corporation has not defaulted in the payment of  
154 principal of or interest on any of its outstanding funded  
155 indebtedness during its preceding ten fiscal years, and (iii)  
156 the bonds, notes or debentures of such corporation to be  
157 purchased are rated "AA" or the equivalent thereof or  
158 better than "AA" or the equivalent thereof by at least two or  
159 more nationally recognized rating services such as  
160 Standard and Poor's, Dun & Bradstreet or Moody's;

161 (8) Fully collateralized or insured bankers acceptances  
162 or time deposits drawn on and accepted by commercial  
163 banks; and

164 (9) Repurchase agreements of commercial banks or  
165 trust companies fully secured by obligations of the type

166 specified in subparagraph (1) and having on the date of such  
167 agreement a fair market value equal to at least one hundred  
168 percent of the principal amount of such repurchase  
169 agreement.

170 (j) To engage necessary personnel and to engage the  
171 services of private consultants for rendering professional  
172 and technical assistance and advice.

173 (k) To establish or increase reserves from moneys  
174 received or to be received by the authority to secure or to  
175 pay the principal of and interest on bonds issued by the  
176 authority pursuant to this article.

177 (l) To do all acts necessary and proper to carry out the  
178 powers expressly granted to the authority in this article.

**§16-29A-6. Hospital loans.**

1 The authority may lend money to hospitals for the  
2 acquisition, construction, improvement or alteration of  
3 hospital facilities. A hospital loan shall not be made unless  
4 the authority is reasonably satisfied that there will be made  
5 available to the hospital from the hospital loan and other  
6 sources all the funds necessary to pay all project costs; that  
7 the hospital facilities will produce revenues sufficient,  
8 together with any other revenues pledged, to meet the  
9 principal of and interest on the hospital loan, other costs,  
10 expenses and charges in connection with the hospital loan  
11 and other charges or obligations of the hospital which may  
12 be prior or equal to the hospital loan, promptly as they  
13 become due; and that the hospital is otherwise soundly  
14 financed. The hospital loan may be secured by a deed of  
15 trust on or a security interest in, as applicable, property of  
16 the hospital, including the hospital facilities, and may  
17 provide for the appointment of a receiver to operate the  
18 hospital facilities in case of default. A hospital loan made  
19 pursuant to this section shall not exceed the project costs as  
20 determined by the authority. A hospital loan shall be  
21 secured in a manner, be repaid in a period not exceeding  
22 fifty years and bear interest at a rate, all as determined by  
23 the authority, which interest rate may be decreased or  
24 increased so that it shall in no event be less than the rate  
25 paid by the authority on notes, renewal notes or bonds

26 issued to fund the hospital loan. Such terms and provisions  
27 shall be set forth in a loan agreement between the authority  
28 and the hospital.

**§16-29A-7. Bonds and notes.**

1 (a) The authority periodically may issue its negotiable  
2 bonds and notes in a principal amount which, in the  
3 opinion of the authority, shall be necessary to provide  
4 sufficient funds for the making of hospital loans, including  
5 temporary loans during the construction of hospital  
6 facilities, for the payment of interest on bonds and notes of  
7 the authority during construction of hospital facilities for  
8 which the hospital loan was made and for a reasonable time  
9 thereafter and for the establishment of reserves to secure  
10 those bonds and notes.

11 (b) The authority periodically may issue renewal notes,  
12 may issue bonds to pay notes and, if it considers refunding  
13 expedient, to refund or to refund in advance bonds or notes  
14 issued by the authority by the issuance of new bonds,  
15 pursuant to the requirements of section thirteen of this  
16 article.

17 (c) Except as may otherwise be expressly provided by  
18 the authority, every issue of its notes or bonds shall be  
19 special obligations of the authority, payable solely from the  
20 property, revenues or other sources of or available to the  
21 authority pledges therefor.

22 (d) The bonds and the notes shall be authorized by  
23 resolution of the authority, shall bear such date and shall  
24 mature at such time or times, in the case of any such note or  
25 any renewals thereof, not exceeding seven years from the  
26 date of issue of such original note, and in the case of any  
27 such bond not exceeding fifty years from the date of issue,  
28 as such resolution may provide. The bonds and notes shall  
29 bear interest at such rate or rates, be in such denominations,  
30 be in such form, either coupon or registered, carry such  
31 registration privileges, be payable in such medium of  
32 payment and at such place or places and be subject to such  
33 terms of redemption as the authority may authorize. The  
34 bonds and notes of the authority may be sold by the  
35 authority, at public or private sale, at or not less than the



36 price the authority determines. The bonds and notes shall  
37 be executed by the chairman and vice chairman of the  
38 board, both of whom may use facsimile signatures. The  
39 official seal of the authority or a facsimile thereof shall be  
40 affixed to or printed on each bond and note and attested,  
41 manually or by facsimile signature, by the secretary-  
42 treasurer of the board, and any coupons attached to any  
43 bond or note shall bear the signature or facsimile signature  
44 of the chairman of the board. In case any officer whose  
45 signature, or a facsimile of whose signature, appears on any  
46 bonds, notes or coupons ceases to be such officer before  
47 delivery of such bonds or notes, such signature or facsimile  
48 is nevertheless sufficient for all purposes the same as if he  
49 had remained in office until such delivery; and, in case the  
50 seal of the authority has been changed after a facsimile has  
51 been imprinted on such bonds or notes, such facsimile seal  
52 will continue to be sufficient for all purposes.

53 (e) A resolution authorizing bonds or notes or an issue of  
54 bonds or notes under this article may contain provisions,  
55 which shall be a part of the contract with the holders of the  
56 bonds or notes, as to any or all of the following:

57 (1) Pledging and creating a lien on all or any part of the  
58 fees and charges made or received or to be received by the  
59 authority, all or any part of the moneys received in payment  
60 of hospital loans and interest on hospital loans and all or  
61 any part of other moneys received or to be received, to  
62 secure the payment of the bonds or notes or of any issue of  
63 bonds or notes, subject to those agreements with  
64 bondholders or noteholders which then exist;

65 (2) Pledging and creating a lien on all or any part of the  
66 assets of the authority, including notes, deeds of trust and  
67 obligations securing the assets, to secure the payment of the  
68 bonds or notes or of any issue of bonds or notes, subject to  
69 those agreements with bondholders or note holders which  
70 then exist;

71 (3) Pledging and creating a lien on any loan, grant or  
72 contribution to be received from the federal, state or local  
73 government or other source;

74 (4) The use and disposition of the income from hospital

75 loans owned by the authority and payment of the principal  
76 of and interest on hospital loans owned by the authority;

77 (5) The setting aside of reserves or sinking funds and the  
78 regulation and disposition thereof;

79 (6) Limitations on the purpose to which the proceeds of  
80 sale of bonds or notes may be applied and pledging the  
81 proceeds to secure the payment of the bonds or notes or of  
82 any issue of the bonds or notes;

83 (7) Limitations on the issuance of additional bonds or  
84 notes and the terms upon which additional bonds or notes  
85 may be issued and secured;

86 (8) The procedure by which the terms of a contract with  
87 the bondholders or noteholders may be amended or  
88 abrogated, the amount of bonds or notes the holders of  
89 which must consent thereto and the manner in which the  
90 consent may be given; and

91 (9) Vesting in a trustee or trustees the property, rights,  
92 powers, remedies and duties which the authority considers  
93 necessary or convenient.

**§16-29A-8. Trustee for bondholders; contents of trust agreement.**

1 In the discretion of the authority, any bonds, including  
2 refunding bonds, or notes issued by the authority may be  
3 secured by a trust agreement between the authority and a  
4 corporate trustee, which trustee may be any trust company  
5 within or without the state. Any such trust agreement may  
6 contain provisions as set forth in section seven of this article  
7 with respect to the resolution. All expenses incurred in  
8 carrying out the provisions of any trust agreement may be  
9 treated as a part of the costs of the operation of the hospital  
10 loan program provided for hereunder. Any such trust  
11 agreement, indenture or resolution authorizing the  
12 issuance of bonds or notes may provide the method whereby  
13 the general administrative overhead expenses of the  
14 authority shall be allocated among the several hospitals to  
15 which hospital loans have been made.

**§16-29A-9. Use of funds by authority; restrictions thereon.**

1 All moneys, properties and assets acquired by the

2 authority, whether as proceeds from the sale of bonds or  
3 notes or as revenues or otherwise, shall be held by it in trust  
4 for the purposes of carrying out its powers and duties and  
5 shall be used and reused in accordance with the purposes  
6 and provisions of this article. Such moneys shall at no time  
7 be commingled with other public funds. Such moneys,  
8 except as otherwise provided in any resolution authorizing  
9 the issuance of bonds or notes or in any trust agreement  
10 securing the same, or except when invested pursuant to  
11 subsection nine, section five of this article, shall be kept in  
12 appropriate depositories and secured as provided and  
13 required by law. The resolution authorizing the issuance of  
14 such bonds or notes of any issue or the trust agreement  
15 securing such bonds or notes shall provide that any officer  
16 to whom, or any banking institution or trust company to  
17 which, such moneys are paid, shall act as trustee of such  
18 moneys and hold and apply them for the purposes hereof,  
19 subject to the conditions this article and such resolution or  
20 trust agreement provide.

**§16-29A-10. Security for bonds and notes.**

1 A resolution authorizing the issuance of bonds or notes  
2 under this article may provide that the principal of and  
3 interest on the bonds or notes issued shall be secured by a  
4 lien on any or all of the fees and charges made or received, or  
5 to be received, by the authority from the hospital in  
6 connection with the hospital loan, on any or all of the money  
7 received in payment of the hospital loan and interest on the  
8 hospital loan, on any or all of investment earnings or profits  
9 on any of these sources or on any or all of the security held  
10 for that payment, and on other funds or assets of the  
11 authority pledged for such purpose.

**§16-29A-11. Enforcement of payment and validity of bonds and notes.**

1 (a) The provisions of this article and any resolution,  
2 indenture, deed of trust or security agreement shall  
3 continue in effect until the principal of and interest on the  
4 bonds or notes of the authority have been fully paid, and the  
5 duties of the authority under this article and any resolution,  
6 indenture, deed of trust or security agreement shall be  
7 enforceable by any bondholder or noteholder by

8 mandamus, trustee's sale under the deed of trust or other  
9 appropriate action in any court of competent jurisdiction.

10 (b) The resolution authorizing the bonds or notes shall  
11 provide that such bonds or notes shall contain a recital that  
12 they are issued pursuant to this article, which recital shall  
13 be conclusive evidence of their validity and of the regularity  
14 of their issuance.

**§16-29A-12. Pledges; time; liens; recordation.**

1 Any pledge made by the authority shall be valid and  
2 binding from the time the pledge is made. The money or  
3 property so pledged and thereafter received by the  
4 authority shall immediately be subject to the lien of the  
5 pledge without any physical delivery thereof or further act.  
6 The lien of any such pledge shall be valid and binding as  
7 against all parties having claims of any kind in tort,  
8 contract or otherwise against the authority, irrespective of  
9 whether such parties have notice thereof.

**§16-29A-13. Refunding bonds.**

1 Any bonds issued hereunder and at any time outstanding  
2 may at any time and from time to time be refunded by the  
3 authority by the issuance of its refunding bonds in such  
4 amount as it may deem necessary to refund the principal of  
5 the bonds so to be refunded, together with any unpaid  
6 interest thereon; to provide additional funds for the  
7 purposes of the authority; and to pay any premiums and  
8 commissions necessary to be paid in connection therewith.  
9 Any such refunding may be effected whether the bonds to  
10 be refunded shall have then matured or shall thereafter  
11 mature, either by sale of the refunding bonds and the  
12 application of the proceeds thereof for the redemption of  
13 the bonds to be refunded thereby or by exchange of the  
14 refunding bonds for the bonds to be refunded thereby:  
15 *Provided*, That the holders of any bonds so to be refunded  
16 shall not be compelled without their consent to surrender  
17 their bonds for payment or exchange prior to the date on  
18 which they are payable or, if they are called for redemption,  
19 prior to the date on which they are by their terms subject to  
20 redemption. Any refunding bonds issued under the  
21 authority of this article shall be payable from the revenues

22 out of which the bonds to be refunded thereby were  
23 payable, from other moneys or from the principal of and  
24 interest on or other investment yield from investments or  
25 proceeds of bonds or other applicable funds and moneys,  
26 including investments of proceeds of any refunding bonds,  
27 shall be subject to the provisions contained in section  
28 seven of this article and shall be secured in accordance with  
29 the provisions of sections seven and eight of this article.

**§16-29A-14. Purchase and cancellation of notes or bonds.**

1 The authority, subject to such agreements with  
2 noteholders or bondholders as may then exist, shall have  
3 power, out of any funds available therefor, to purchase  
4 bonds, including refunding bonds, or notes of the authority.

5 If the bonds or notes are then redeemable, the price of  
6 such purchase shall not exceed the redemption price then  
7 applicable plus accrued interest to the next interest  
8 payment date thereon. If the bonds or notes are not then  
9 redeemable, the price of such purchase shall not exceed the  
10 redemption price applicable on the first date after such  
11 purchase, such bonds or notes shall be cancelled.  
12 redemption plus accrued interest to such date. Upon such  
13 purchase, such bonds or notes shall be canceled.

**§16-29A-15. Vested rights; impairment.**

1 The state pledges and agrees with the holders of any  
2 bonds or notes issued under this article that the state will  
3 not limit or alter the rights vested in the authority to fulfill  
4 the terms of any agreements made with the holders thereof,  
5 or in any way impair the rights and remedies of the holders  
6 until the bonds or notes, together with the interest thereon,  
7 and all costs and expenses in connection with any action or  
8 proceeding by or on behalf of such holders, are fully met and  
9 discharged. The authority is authorized to include this  
10 pledge and agreement of the state in any agreement with the  
11 holders of such bonds or notes.

**§16-29A-16. Bonds and notes not debt of state, county, municipality or any political subdivision; expenses incurred pursuant to article.**

1 Bonds, including refunding bonds, and notes issued

2 under the authority of this article and any coupons in  
3 connection therewith shall not constitute a debt or a pledge  
4 of the faith and credit or taxing power of this state or of any  
5 county, municipality or any other political subdivision of  
6 this state, and the holders and owners thereof shall have no  
7 right to have taxes levied by the Legislature or the taxing  
8 authority of any county, municipality or any other political  
9 subdivision of this state for the payment of the principal  
10 thereof or interest thereon, but such bonds and notes shall  
11 be payable solely from the revenues and funds pledged for  
12 their payment as authorized by this article unless the notes  
13 are issued in anticipation of the issuance of bonds or the  
14 bonds are refunded by refunding bonds issued under the  
15 authority of this article, which bonds or refunding bonds  
16 shall be payable solely from revenues and funds pledged for  
17 their payment as authorized by this article. All such bonds  
18 and notes shall contain on the face thereof a statement to  
19 the effect that the bonds or notes, as to both principal and  
20 interest, are not debts of the state or any county,  
21 municipality or political subdivision thereof, but are  
22 payable solely from revenues and funds pledged for their  
23 payment.

24 All expenses incurred in carrying out the provisions of  
25 this article shall be payable solely from funds provided  
26 under the authority of this article. Such article does not  
27 authorize the authority to incur indebtedness or liability  
28 on behalf of or payable by the state or any county,  
29 municipality or any other political subdivision thereof.

**§16-29A-17. Negotiability of bonds and notes.**

1 Whether or not the bonds or notes are of such form or  
2 character as to be negotiable instruments under the  
3 uniform commercial code, the bonds or notes authorized to  
4 be issued by this article are negotiable instruments within  
5 the meaning of and for all the purposes of the uniform  
6 commercial code, subject only to the provisions of the bonds  
7 or notes for registration.

**§16-29A-18. Bonds and notes legal investments.**

1 The provisions of sections nine and ten, article six,  
2 chapter twelve of this code to the contrary notwithstanding,

3 the bonds and notes of the authority are securities in which  
4 all public officers and bodies of this state, including the  
5 West Virginia state board of investments, all municipalities  
6 and other political subdivisions of this state, all insurance  
7 companies and associations and other persons carrying on  
8 an insurance business, including domestic for life and  
9 domestic not for life insurance companies, all banks, trust  
10 companies, societies for savings, building and loan  
11 associations, savings and loan associations, deposit  
12 guarantee associations and investment companies, all  
13 administrators, guardians, executors, trustees and other  
14 fiduciaries and all other persons whatsoever who are  
15 authorized to invest in bonds or other obligations of the  
16 state may properly and legally invest funds, including  
17 capital, in their control or belonging to them.

**§16-29A-19. Exemption from taxation.**

1 The exercise of the powers granted to the authority by  
2 this article will be in all respects for the benefit of the people  
3 of the state for the improvement of their health, safety,  
4 convenience and welfare and is a public purpose. As the  
5 operation and maintenance of hospital facilities will  
6 constitute the performance of essential governmental  
7 functions, the authority shall not be required to pay any  
8 taxes or assessments upon any property acquired or used by  
9 the authority or upon the income therefrom. All bonds and  
10 notes of the authority, and all interest and income thereon,  
11 shall be exempt from all taxation by this state and any  
12 county, municipality, political subdivision or agency  
13 thereof, except inheritance taxes.

**§16-29A-20. Certificate of need.**

1 Before the authority makes a hospital loan to any  
2 hospital, and as a condition precedent to the authority's  
3 making any such hospital loan, a certificate of need shall be  
4 obtained pursuant to article two-d of this chapter, or a  
5 determination shall be secured from the agency issuing the  
6 certificate of need that a certificate is not necessary for the  
7 hospital facilities with respect to which the hospital loan is  
8 proposed to be made: *Provided*, That if a certificate of need  
9 is not necessary for a specific project or projects, then the

10 health care cost review authority created by section five,  
11 article twenty-nine-b of this chapter must be consulted by  
12 the authority concerning the availability of financial  
13 resources to both repay the loan and to fund the ongoing  
14 operations of the project or projects. The opinion of the  
15 health care cost review authority, while not determinative  
16 on the question of the issuance of the hospital loan, shall be  
17 entitled to substantial weight before the authority and shall  
18 be overcome only by clear and convincing evidence to the  
19 contrary. This section shall not apply to refinancing of  
20 present indebtedness or to refunding or advance refunding  
21 of bonds or notes.

**§16-29A-21. Nondiscrimination; hospital facilities.**

1 The authority shall require that use of hospital facilities  
2 assisted under this article shall be open to all, regardless of  
3 race, religion, sex or creed, and that contractors and  
4 subcontractors engaged in the construction or alteration of  
5 such hospital facilities shall provide an equal opportunity  
6 for employment, without discrimination as to race, religion,  
7 sex or creed. The hospital to which any hospital loan is  
8 made shall covenant with the authority that the  
9 nondiscrimination provisions shall be enforced.

**§16-29A-22. Personal liability; persons executing bonds or notes.**

1 Neither the members or officers of the board nor officers  
2 or employees of the authority nor any person executing the  
3 bonds or notes shall be liable personally on the bonds or  
4 notes or be subject to any personal liability or  
5 accountability by reason of the issuance thereof.

**§16-29A-23. Financial interest in contracts prohibited; penalty.**

1 No officer, member or employee of the board or the  
2 authority shall be financially interested, directly or  
3 indirectly, in any contract of any person with the authority,  
4 or in the sale of any property, real or personal, to or from the  
5 authority. This section does not apply to contracts or  
6 purchases of property, real or personal, between the  
7 authority and any governmental agency. If any officer,  
8 member or employee of the board or the authority has such



9 financial interest in a contract or sale of property  
10 prohibited hereby, he shall be guilty of a misdemeanor, and,  
11 upon conviction thereof, shall be fined not more than one  
12 thousand dollars, or imprisoned in the county jail not more  
13 than one year, or both fined and imprisoned.

**§16-29A-24. Meetings and records of authority to be kept public.**

1 All meetings of the authority shall be open to the public,  
2 and the records of the authority shall be open to public  
3 inspection at all reasonable times, except as otherwise  
4 provided in this section. All final actions of the authority  
5 shall be journalized, and such journal shall also be open to  
6 the inspection of the public at all reasonable times. Any  
7 records or information relating to secret processes or secret  
8 methods of manufacture or production which may be  
9 obtained by the authority or other persons acting under  
10 authority of this article are confidential and shall not be  
11 disclosed.

**§16-29A-25. Cumulative authority as to powers conferred;  
applicability of other statutes and charters.**

1 This article shall be construed as granting cumulative  
2 authority for the exercise of the various powers herein  
3 conferred, and neither the powers nor any bonds or notes  
4 issued hereunder shall be affected or limited by any other  
5 statutory or charter provision now or hereafter in force,  
6 other than as may be provided in this article, it being the  
7 purpose and intention of this article to create full, separate  
8 and complete additional powers. The various powers  
9 conferred herein may be exercised independently and  
10 notwithstanding that no bonds or notes are issued  
11 hereunder.

**§16-29A-26. Liberal construction.**

1 This article, being necessary for and to secure the public  
2 health, safety, convenience and welfare of the citizens of the  
3 state, shall be liberally construed to effect the public  
4 purposes hereof.

**CHAPTER 93**

(Com. Sub. for S. B. 351—By Mr. McGraw, Mr. President, et al.)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, five, seven and eight, article six, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto seven new sections, designated sections nine, ten, eleven, twelve, thirteen, fourteen and fifteen, all relating to adult protective services; definitions; redefining an "emergency situation"; establishing and continuing the system of adult protective services within the department of human services; authorizing the commissioner of such department to promulgate regulations; setting forth goals to be attained; establishing procedures for emergency situations; when peace officer or employees of such department may remove or offer transportation to an incapacitated adult; proceedings for remedial treatment; requiring department to develop a comprehensive plan to achieve goals; prohibiting the department from compelling acceptance of services; providing for confidentiality of records and exceptions; mandating and permitting certain persons to report incidents of abuse, neglect or emergency situations; when cases of abuse and neglect are to be reported to a medical examiner or coroner; establishing procedures for reporting cases of neglect, abuse or emergency situations; availability of reports; limitations; establishing immunity from liability for persons making good faith reports; abrogating certain privileged communications; when failure to report is a crime; establishing crimes relating to the abuse or neglect of, or creation of an emergency situation for, an incapacitated adult; providing for criminal penalties; and creating exceptions when treatment is rendered by spiritual means in accordance with the tenets and practices of a recognized church or religious denomination or organization.

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

That sections one, two, five, seven and eight, article six,

chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto seven new sections, designated sections nine, ten, eleven, twelve, thirteen, fourteen and fifteen, all to read as follows:

**ARTICLE 6. SOCIAL SERVICES FOR ADULTS.**

- §9-6-1. Definitions.
- §9-6-2. Adult protective services; rules and regulations; organization and duties.
- §9-6-5. Emergency immediate remedial treatment; procedure.
- §9-6-7. Comprehensive system of adult protective services; compulsory; assistance prohibited.
- §9-6-8. Confidentiality of records.
- §9-6-9. Mandatory reporting of incidences of abuse, neglect or emergency situation.
- §9-6-10. Mandatory reporting to medical examiner or coroner; postmortem investigation.
- §9-6-11. Reporting procedures.
- §9-6-12. Reporting person's immunity from liability.
- §9-6-13. Abrogation of privileged communications.
- §9-6-14. Failure to report; penalty.
- §9-6-15. Abuse or neglect of incapacitated adult; creation of emergency situation; penalties.

**§9-6-1. Definitions.**

- 1 The following words and terms, when used in this article,
- 2 shall have the same meaning hereinafter ascribed to them
- 3 unless the context clearly indicates a different meaning:
- 4 (1) "Adult protective services agency" shall mean any
- 5 public or nonprofit private agency, corporation, board or
- 6 organization furnishing protective services to adults;
- 7 (2) "Abuse" shall mean the infliction or threat to inflict
- 8 physical pain or injury on or the imprisonment of any
- 9 incapacitated adult;
- 10 (3) "Neglect" shall mean (i) the failure to provide the
- 11 necessities of life to an incapacitated adult with intent to
- 12 coerce or physically harm such incapacitated adult or (ii)
- 13 the unlawful expenditure or willful dissipation of the funds
- 14 or other assets owned or paid to or for the benefit of an
- 15 incapacitated adult;
- 16 (4) "Incapacitated adult" shall mean any person who by

17 reason of physical, mental or other infirmity is unable to  
18 independently carry on the daily activities of life necessary  
19 to sustaining life and reasonable health;

20 (5) "Emergency" or "emergency situation" shall mean a  
21 situation or set of circumstances which presents a  
22 substantial and immediate risk of death or serious injury to  
23 an incapacitated adult.

**§9-6-2. Adult protective services; rules and regulations;  
organization and duties.**

1 There is hereby established and continued within the  
2 department of human services the system of adult  
3 protective services heretofore existing. The commissioner  
4 shall by regulation prescribe the organization and duties of  
5 and procedures which shall be used by the department to  
6 effectuate the purposes of this article, which regulations  
7 may be amended and supplemented from time to time. The  
8 commissioner shall design and arrange such regulations to  
9 attain, or move toward the attainment of the following  
10 goals, to the extent that the commissioner believes feasible  
11 under the provisions of this article within the state  
12 appropriations and other funds available:

13 (1) Assisting adults who are abused, neglected or  
14 incapacitated in achieving or maintaining self-sufficiency  
15 and self-support, and preventing, reducing and eliminating  
16 their dependency on the state;

17 (2) Preventing, reducing and eliminating neglect and  
18 abuse of adults who are unable to protect their own  
19 interests;

20 (3) Preventing and reducing institutional care of adults  
21 by providing less intensive forms of care, preferably in the  
22 home;

23 (4) Referring and admitting abused, neglected or  
24 incapacitated adults to institutional care only where other  
25 available services are inappropriate; and

26 (5) Providing services and monitoring to adults in  
27 institutions designed to assist adults in returning to  
28 community settings.

29 Such regulations shall provide for the means by which the  
30 department shall cooperate with federal, state and other  
31 agencies to fulfill the objectives of the system of adult  
32 protective services.

**§9-6-5. Emergency immediate remedial treatment; procedure.**

1 Whenever a circuit court shall find in an action to abate  
2 an emergency situation that there is probable cause to  
3 believe that an incapacitated adult is in an emergency  
4 situation, and that the person or persons having the  
5 immediate care, custody and control of such incapacitated  
6 adult refuses to take necessary steps to alleviate such  
7 emergency, or that such incapacitated adult is without the  
8 actual care, custody and control of any persons, it may issue  
9 an order of attachment for such incapacitated adult and  
10 direct that the peace officer executing the same deliver such  
11 incapacitated adult in his custody to a hospital or other safe  
12 place except a jail, for immediate remedial treatment to  
13 reduce or avoid the risk of death or serious injury. In the  
14 event that an order of attachment is issued pursuant to this  
15 section, any peace officer executing the order, and such  
16 employees of the department the peace officer directs to  
17 accompany him, may enter into the place of abode to  
18 remove such incapacitated person, notwithstanding the  
19 residence therein of other persons.

20 If any employee or officer of the department shall by  
21 direct observation of an incapacitated adult not in the  
22 immediate care, custody or control of another have  
23 reasonable cause to believe that such incapacitated person  
24 is then and there in an emergency situation, then such  
25 officer or employee may offer transportation to a hospital or  
26 other safe place, other than a jail, to such incapacitated  
27 adult for immediate remedial treatment to reduce or avoid  
28 the risk of death or serious injury.

29 Immediately upon delivery of any incapacitated person to  
30 such hospital or other safe place, such officer or employee  
31 shall apply to the circuit court for and the court shall  
32 appoint, and in the case of an attachment the court shall  
33 contemporaneously with its issuance appoint, a guardian  
34 ad litem who shall not be an employee of the state, nor be an  
35 interested party nor be selected by nor in the employ of any

36 interested party, to represent the interests of such  
37 incapacitated adult, and the court shall fix a time, not later  
38 than one judicial day later, to determine if such remedial  
39 treatment shall continue or such incapacitated adult should  
40 be released. A copy of that attachment and notice of such  
41 hearing shall be served on any person in whose actual care,  
42 custody and control such incapacitated adult is found. If  
43 further remedial treatment is required, application shall be  
44 promptly made to the county commission or such other  
45 proper tribunal for appropriate relief: *Provided*, That the  
46 commitment for further remedial treatment may be  
47 continued until proceedings for such appropriate relief be  
48 concluded: *Provided, however*, That application for release  
49 from such remedial treatment may be made and granted at  
50 any time that the emergency ceases.

**§9-6-7. Comprehensive system of adult protective services;  
compulsory assistance prohibited.**

1 The department shall develop a plan for a comprehensive  
2 system of adult protective services including social  
3 casework, medical and psychiatric services, home care, day  
4 care, counseling, research and others to achieve the goals of  
5 this article.

6 It shall offer such services as are available and  
7 appropriate in the circumstances to persons who, other  
8 than for compensation, have or intend to have the actual,  
9 physical custody and control of an incapacitated adult and  
10 to such incapacitated adults or to adults who may request  
11 and be entitled to such protective services: *Provided*, That  
12 except as expressly provided in this article, the department  
13 may not directly or indirectly compel the acceptance of such  
14 services by any person or discriminate against a person who  
15 refuses such services.

**§9-6-8. Confidentiality of records.**

1 Except as otherwise provided in this section, all records  
2 of the department and all protective services agencies  
3 concerning an adult under this article shall be confidential  
4 and shall not be released, except in accordance with the  
5 provisions of section eleven of this article.

6 Unless the adult concerned is receiving adult protective

7 services or unless there are pending proceedings with  
8 regard to such adult, the records shall be destroyed two  
9 years following their preparation. A circuit court or the  
10 supreme court of appeals may subpoena such records, but  
11 shall, before permitting their use in connection with any  
12 court proceeding, review the same for relevancy and  
13 materiality to the issues in the proceeding, and may issue  
14 such order to limit the examination and use of such records  
15 or any part thereof, having due regard for the purposes of  
16 this article and the requirements of the litigation as shall be  
17 just.

**§9-6-9. Mandatory reporting of incidences of abuse, neglect or emergency situation.**

1 If any medical, dental or mental health professional,  
2 christian science practitioner, religious healer, social  
3 service worker, peace officer or law-enforcement officer  
4 has reasonable cause to believe that an incapacitated adult  
5 is neglected, abused or in an emergency situation, or if such  
6 person observes an incapacitated adult being subjected to  
7 conditions that are likely to result in abuse, neglect or an  
8 emergency situation, the person shall immediately report  
9 the circumstances or cause a report to be made to the  
10 department's local protective services agency: *Provided*,  
11 That nothing in this article is intended to prevent  
12 individuals from reporting on their own behalf.

13 In addition to those persons and officials specifically  
14 required to report situations involving suspected abuse or  
15 neglect of an incapacitated adult or the existence of an  
16 emergency situation, any other person may make such a  
17 report.

**§9-6-10. Mandatory reporting to medical examiner or coroner; postmortem investigation.**

1 Any person or official who is required under section nine  
2 of this article to report cases of suspected abuse or neglect  
3 and who has probable cause to believe that an incapacitated  
4 adult has died as a result of abuse or neglect shall report  
5 that fact to the appropriate medical examiner or coroner.  
6 Upon the receipt of such a report, the medical examiner or  
7 coroner shall cause an investigation to be made and shall

8 report the findings to the local law-enforcement agency, the  
9 local prosecuting attorney, the department's local adult  
10 protective services agency and, if the institution making a  
11 report is a hospital, to the hospital.

**§9-6-11. Reporting procedures.**

1 A report of neglect or abuse of an incapacitated adult or  
2 of an emergency situation involving such an adult shall be  
3 made immediately by telephone to the department's local  
4 adult protective services agency and shall be followed by a  
5 written report within forty-eight hours. The department  
6 shall, upon receiving any such report, take such action as  
7 may be appropriate and shall maintain a record thereof.  
8 The department shall receive such telephonic reports on its  
9 twenty-four hour, seven-day-a-week, toll-free number  
10 established to receive calls reporting cases of suspected or  
11 known adult abuse or neglect.

12 A copy of any report of abuse, neglect or emergency  
13 situation shall be made available immediately to the  
14 appropriate law-enforcement agency and the prosecuting  
15 attorney, or in case of a death, to the appropriate medical  
16 examiner or coroner's office: *Provided*, That the  
17 department shall omit from such report in the first instance,  
18 the name of the person making a report, when requested by  
19 such person. Reports of known or suspected institutional  
20 abuse or neglect of an incapacitated adult or the existence  
21 of an emergency situation in an institution shall be made,  
22 received and investigated in the same manner as other  
23 reports provided for in this article. In the case of a report  
24 regarding an institution, the department shall immediately  
25 cause an investigation of the institution to be conducted.

**§9-6-12. Reporting person's immunity from liability.**

1 Any person who in good faith makes or causes to be made  
2 any report permitted or required by this article shall be  
3 immune from any civil or criminal liability which might  
4 otherwise arise solely out of making such report.

**§9-6-13. Abrogation of privileged communications.**

1 The privileged status of communications between  
2 husband and wife, and with any person required to make



3 reports under sections nine or ten of this article, except  
4 communications between an attorney and his client, is  
5 hereby abrogated in circumstances involving suspected or  
6 known abuse or neglect of an incapacitated adult or where  
7 the incapacitated adult is in a known or suspected  
8 emergency situation.

**§9-6-14. Failure to report; penalty.**

1 Any person subject to the mandatory reporting  
2 provisions of this article who knowingly fails to make any  
3 report required herein or any person who knowingly  
4 prevents another person from making such a report is guilty  
5 of a misdemeanor, and, upon conviction thereof, shall be  
6 fined not more than one hundred dollars or imprisoned in  
7 the county jail for not more than ten days, or both fined  
8 and imprisoned.

**§9-6-15. Abuse or neglect of incapacitated adult; creation of  
emergency situation; penalties.**

1 (a) Any person having actual care, custody or control of  
2 an incapacitated adult who abuses or neglects such adult, or  
3 who knowingly permits another person to abuse or neglect  
4 or create an emergency situation for an incapacitated adult,  
5 is guilty of a misdemeanor, and, upon conviction thereof,  
6 shall be fined not less than five hundred dollars nor more  
7 than fifteen hundred dollars, or imprisoned in the county  
8 jail for not less than ninety days nor more than one year, or  
9 both fined and imprisoned.

10 (b) Any person having actual care, custody or control of  
11 an incapacitated adult who with the intent to abuse or  
12 neglect such adult willfully creates an emergency situation  
13 for an incapacitated adult, is guilty of a felony, and, upon  
14 conviction thereof, shall, in the discretion of the court, be  
15 confined in the penitentiary for not less than two nor more  
16 than ten years or be confined in the county jail for not more  
17 than twelve months and fined not more than fifteen  
18 hundred dollars.

19 (c) Nothing in this article shall be construed to mean an  
20 adult is abused or neglected for the sole reason that his or  
21 her independent decision is to rely upon treatment by  
22 spiritual means in accordance with the tenets and practices

23 of a recognized church or religious denomination or  
24 organization in lieu of medical treatment. No person shall  
25 be found guilty of the offenses set forth in this section and  
26 section fourteen of this article solely for the reason that he  
27 or she relies upon treatment by spiritual means in  
28 accordancc with the tenets and practices of a recognized  
29 church or religious denomination or organization in lieu of  
30 medical treatment: *Provided*, That nothing in this section  
31 shall limit the right of any person to utilize the remedies  
32 provided in this article or elsewhere in law to afford  
33 protection to an incapacitated adult in the care, custody or  
34 control of another person which other person refuses to  
35 provide medical treatment solely for the reason that such  
36 other person relies upon treatment by spiritual means in  
37 accordance with the tenets and practices of a recognized  
38 church or religious denomination or organization in lieu of  
39 medical treatment, unless such incapacitated adult shall,  
40 by his or her independent decision, rely upon such  
41 treatment by spiritual means.

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## CHAPTER 94

(H. B. 1025—By Delegate Steptoe and Delegate J. Martin)

[Passed February 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-b, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting persons holding a Class A-1 small arms hunting license to use a pistol or revolver with a barrel length of four inches or more; requiring the promulgation of certain regulations with respect thereto; and the disposition of fees collected in connection to such licensure.

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

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

**ARTICLE 2. WILDLIFE RESOURCES.****§20-2-40b. Class A-1 small arms hunting license.**

1 Notwithstanding the provisions of section two, article seven,  
2 chapter sixty-one of this code, a Class A-1 license shall be  
3 a small arms hunting license. If a person is otherwise  
4 qualified, a Class A-1 license may be issued by the depart-  
5 ment, pursuant to rules and regulations promulgated by the  
6 director, which regulations shall include provision for the  
7 establishment of a voluntary program available to citizens of  
8 the state pertaining to safety and proficiency in the use of a  
9 revolver or pistol, to a person twenty-one years of age or  
10 older who holds a valid Class A or Class AB license, or to a  
11 person who is a resident and sixty-five years of age or older,  
12 but a Class A-1 license shall never be issued to a person who  
13 has been convicted of a misdemeanor in any way associated  
14 with the use of firearms or dangerous weapons or who has  
15 been convicted of any felony nor shall the clerk of the county  
16 commission issue Class A-1 licenses as provided in section  
17 thirty-two, article two of this chapter.

18 A Class A-1 license shall entitle the licensee to hunt, as  
19 otherwise permitted by the provisions of this chapter, but  
20 only during small game and big game seasons as established  
21 annually by the director, with either a revolver or pistol  
22 which has a barrel at least four inches in length. A Class A-1  
23 license shall entitle the licensee to carry or have in his pos-  
24 session one, and only one, revolver or pistol when going  
25 to and from his home or residence and a place of hunting  
26 and while hunting in the place: *Provided*, That such Class  
27 A-1 license shall not be valid unless the licensee have in his  
28 possession a valid Class A or Class AB license or be a resident  
29 and sixty-five years of age or older: *Provided, however*,  
30 That at all times, when not actually hunting, the revolver or  
31 pistol shall be unloaded.

32 While hunting, the licensee shall carry the revolver or  
33 pistol outside of his person in an unconcealed and easily  
34 visible place. At all other times the revolver or pistol shall be  
35 cased or dismantled in a way to cause it not to operate. When  
36 being transported in a vehicle it shall be kept in a locked

37 compartment of the vehicle which shall not be accessible  
38 from the inside of such vehicle.

39 The fee shall be five dollars for a Class A-1 license. All  
40 such fees collected shall be deposited in the state treasury and  
41 credited to the law-enforcement division of the department of  
42 natural resources. Such fees shall be paid out of the state  
43 treasury on order of the director and used solely for law-  
44 enforcement purposes.

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## CHAPTER 95

(Com. Sub. for S. B. 187—By Senator Williams)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

**AN ACT** to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections forty-six-f and forty-six-g, relating to providing the director authority to issue a special Class R resident deer stamp and Class RR nonresident deer stamp, respectively, to allow the holder to hunt for and kill an additional deer; establishing fees; and providing for promulgation of rules and regulations governing issuance and use of such stamps.

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

That article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections forty-six-f and forty-six-g, to read as follows:

### **ARTICLE 2. WILDLIFE RESOURCES.**

§20-2-46f. Class R special resident deer hunting stamp for an additional deer.

§20-2-46g. Class RR special nonresident deer hunting stamp for an additional deer.

**§20-2-46f. Class R special resident deer hunting stamp for an additional deer.**

1 The director shall have the authority to issue a special

2 Class R resident deer stamp when he deems it essential for  
3 the proper management of the wildlife resources. This  
4 stamp will allow the holder to hunt for and kill an  
5 additional deer as designated by the director. The fee for a  
6 Class R resident deer stamp shall be ten dollars.

7 The director shall promulgate rules and regulations  
8 governing the issuance and use of said stamp.

**§20-2-46g. Class RR special nonresident deer hunting stamp  
for an additional deer.**

1 The director shall have the authority to issue a special  
2 Class RR nonresident deer stamp when he deems it essential  
3 for the proper management of the wildlife resources. This  
4 stamp will allow the holder to hunt for and kill an  
5 additional deer as designated by the director. The fee for a  
6 Class RR nonresident deer stamp shall be twenty-five  
7 dollars.

8 The director shall promulgate rules and regulations  
9 governing the issuance and use of said stamp.

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## CHAPTER 96

(H. B. 1682—By Delegate Riffle)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen-c, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the premium tax paid by insurance companies; when report and remittance due.

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

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

**ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.**

**§33-3-14c. Computation of tax; payment.**

1 The taxes levied hereunder shall be due and payable in

2 quarterly installments on or before the twenty-fifth day of  
3 the month succeeding the end of the quarter in which they  
4 accrue, except for the fourth quarter, for which taxes shall  
5 be due and payable on or before the first day of March of  
6 the succeeding year. The insurer subject to making such  
7 payments shall, by the twenty-fifth day of the month suc-  
8 ceeding the close of the quarter, except the fourth quarter  
9 as provided above, prepare an estimate of the tax based  
10 on the estimated amount of taxable premium during the  
11 preceding calendar quarter, less adjustments to the gross  
12 amount of direct premiums from the preceding quarter, sign  
13 the same by its president or secretary, under oath, and mail  
14 the same together with a remittance of the amount of tax to  
15 the office of the commissioner. The tax remittance shall be  
16 postmarked on or by the twenty-fifth day of the month  
17 succeeding the quarter in which the taxes accrue, or in the  
18 case of the fourth quarter, postmarked on or before the first  
19 day of March.

20 Any insurer failing or refusing to pay estimated taxes  
21 and whose taxes are not postmarked by the preceding dates for  
22 quarterly filing is liable for a civil penalty of up to one hundred  
23 dollars for each additional day of delinquency, to be assessed  
24 by the commissioner. Failure of an insurer to make quarterly  
25 payments, if required, of at least one fourth of either the  
26 total tax paid during the preceding calendar year or eighty  
27 percent of the actual tax for the current calendar year is  
28 considered the same as a failure or refusal to pay the estimated  
29 taxes and subjects the insurer to the penalties provided in  
30 this section. The amount of estimated taxes and the penalties  
31 collected shall be paid to the commissioner and he may sus-  
32 pend the insurer until estimated taxes and penalty, should  
33 any penalty be imposed, are fully paid.

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## CHAPTER 97

(H. B. 1919—By Delegate Riffle)

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[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article eight, chapter thirty-three of

the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto three new sections, designated sections twenty-three, twenty-four and twenty-five, all relating to the authorized investments of insurers and authorizing the insurance commissioner to adopt certain rules and regulations relating thereto.

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

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

**ARTICLE 8. INVESTMENTS.**

§33-8-23. Repurchase agreements.

§33-8-24. Risk-limiting provisions.

§33-8-25. Securities not otherwise specified.

**§33-8-23. Repurchase agreements.**

1 (a) Subject to the limitations and restrictions contained  
2 herein, an insurer may make loans to or purchases of  
3 securities from a solvent bank, savings and loan association,  
4 credit union or securities broker registered under the Securities  
5 Exchange Act of 1934 under an agreement, commonly called  
6 repurchase agreement, which agreement provides for the pur-  
7 chase by the insurer of securities and which agreement matures  
8 within ninety days or less and provides for the repurchase  
9 by such entity of the same or similar securities purchased by  
10 the insurer, provided:

11 (1) Such loan collateral or securities purchased would  
12 otherwise be authorized as investments under the provisions  
13 of this chapter, and the total market value of such securities  
14 equals or exceeds the amount of such loan or purchase  
15 when it is made; and

16 (2) Such loan collateral or securities purchased from any  
17 one bank, savings and loan association, credit union or  
18 securities broker does not exceed the greater of five percent  
19 of the insurer's assets or five percent of the amount of capital,  
20 surplus and undivided profits of such bank, savings and loan  
21 association, credit union or securities broker.

22 (b) The insurance commissioner may promulgate reason-  
23 able rules, regulations and orders consistent with and im-  
24 plementing the provisions of this article.

**§33-8-24. Risk-limiting provisions.**

1 (a) Subject to the rules and regulations promulgated by  
2 the commissioner and the limitations contained in subsections  
3 (b) and (d) of this section with respect to assets owned  
-4 by an insurer, any insurer may, for purposes of protecting  
5 such assets against the risk of changing asset values or interest  
6 rates and for risk reduction only, buy put options or sell call  
-7 options and terminate the same, buy or sell interest rate  
8 futures contracts and options on interest rate futures con-  
9 tracts, or utilize such other instruments or devices as are  
10 consistent with this article and are traded on an established  
11 exchange regulated by the securities and exchange commission  
12 or the commodities futures trading corporation.

13 (b) An insurer may engage in the purchase of put options  
14 or sale of call options and terminate such options, only  
15 with regard to:

16 (1) Securities owned by the insurer; or

17 (2) Securities which the insurer may obtain through exer-  
18 cise of warrants or conversion rights held by the insurer.

19 (c) Subject to the rules and regulations promulgated by  
20 the commissioner and the limitations contained in subsection  
21 (d) of this section with respect to cash flows reasonably  
22 anticipated to be available for investment purposes within  
23 the succeeding twelve months, which anticipation cannot ex-  
24 ceed an amount equal to ten percent of such insurer's ad-  
25 mitted assets, an insurer may, for purposes of protecting  
26 such cash flows against the risk of changing asset values or  
27 interest rates and for risk reduction only, buy or sell interest  
28 rate futures contracts and options on interest rate futures  
29 contracts or utilize such other instruments or devices as are  
30 consistent with this article and are traded on an established  
31 exchange regulated by the securities and exchange commission  
32 or the commodities futures trading corporation.



33 (d) An insurer may engage in the practices authorized by  
34 this article only if prior thereto the board of directors of  
35 such insurer has adopted a written policy which specifies:

36 (1) The types of risk-limiting practices approved for  
37 such insurer;

38 (2) The aggregate maximum limits in such instruments,  
39 which maximum limits must be reasonably related to the  
40 insurer's business needs and its capacity to fulfill its obliga-  
41 tions thereunder;

42 (3) The specific assets or class of assets or cash flows  
43 for which risk-limiting practice may be employed; and

44 (4) That the insurer's accounting or investment records  
45 shall specifically identify the assets or cash flows for which  
46 each risk-limiting practice is used.

47 (e) The commissioner is hereby authorized to adopt such  
48 reasonable rules and regulations, not inconsistent with the  
49 provisions of this article, which prescribe reasonable limits,  
50 standards and guidelines with respect to such risk-limiting  
51 devices and plans related thereto.

**§33-8-25. Securities not otherwise specified.**

1 Notwithstanding any expressed or implied prohibitions,  
2 an insurance company may, after the effective date of this  
3 amendment, invest any of its funds and accumulations in  
4 investments which do not otherwise qualify under any other  
5 provision of this article: *Provided*, That the amount of any  
6 one such investment under this section shall not exceed one  
7 percent of the admitted assets of any such insurance com-  
8 pany; and that the investment authorized by this section  
9 shall not exceed the lesser of (a) five percent of its admitted  
10 assets or (b) the amount of its capital and surplus in excess  
11 of two hundred thousand dollars as shown on its last annual  
12 statement prior to the date of the acquisition of such in-  
13 vestment as filed with the commissioner.

## CHAPTER 98

(S. B. 66—By Senator Tucker)

[Passed March 8, 1984; 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 twelve-a, relating to the contractual relationship between insurance companies and agents; declaration of purpose; definitions; termination of contractual relationship; notice; good cause; notice of cancellation void in certain cases; violation of provisions of this article; and providing a statute of limitations.

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

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

### **ARTICLE 12A. CONTRACTUAL RELATIONSHIP BETWEEN INSURANCE COMPANIES AND AGENTS.**

§33-12A-1. Declaration of purpose.

§33-12A-2. Definitions.

§33-12A-3. Termination of contractual relationship; notice; good cause.

§33-12A-4. Notice of cancellation void in certain cases.

§33-12A-5. Violation of provisions of this article; statute of limitations.

#### **§33-12A-1. Declaration of purpose.**

1 It is hereby found and determined by the Legislature  
2 that it is essential to the best interests of the citizens  
3 of this state that the contractual relationship between  
4 insurance agents and insurance companies be established;  
5 and that this article is enacted for the purpose of prohibit-  
6 ing arbitrary and capricious cancellation of such con-  
7 tractual relationships.

#### **§33-12A-2. Definitions.**

1 As used in this article:

2 (a) "Insurance company" means any individual, firm

3 or corporation engaged in the business of selling in-  
4 surance in this state, excepting only: (1) Clubs or as-  
5 sociations organized under the laws of this state which  
6 sell insurance to their members and (2) companies en-  
7 gaged exclusively in the sale of life or accident and sick-  
8 ness insurance.

9 (b) "Insurance agent" means any individual, firm or  
10 corporation appointed by an insurance company, as de-  
11 fined herein, whose exclusive activity in this field is in  
12 behalf of a single insurance company and who is autho-  
13 rized by that company to solicit insurance or to negotiate  
14 insurance on its behalf, and who is authorized by the  
15 insurance company to effectuate and countersign insur-  
16 ance contracts on its behalf.

**§33-12A-3. Termination of contractual relationship; notice;  
good cause.**

1 No insurance company may cancel, refuse to renew or  
2 otherwise terminate a written contractual relationship  
3 with any insurance agent who has been employed or  
4 appointed pursuant to that written contract by such  
5 insurance company for a period of more than five years,  
6 except for "good cause," as prescribed herein. If an  
7 insurance company proposes to cancel, fail to renew or  
8 otherwise terminate a contractual relationship with the  
9 agent, the company shall so notify the agent by certified  
10 mail at least ninety days prior to the date upon which  
11 the company proposed to cancel, fail to renew or ter-  
12 minate the contractual relationship. Such notice shall  
13 include a statement of the grounds upon which the in-  
14 surance company bases its decision to cancel, refuse to  
15 renew or terminate any contractual relationship.

16 The following matters are "good cause" for an in-  
17 surance company to terminate the contractual relation-  
18 ship with its agent:

19 (a) Criminal misconduct or gross negligence relating to  
20 the business or premises of the insurance agency;

21 (b) Fraud or moral turpitude;

22 (c) Abandonment or unattendance of the business or  
23 premises of the insurance agency for such period of  
24 time as may unreasonably interfere with the transacting  
25 of business;

26 (d) The failure by the agent to pay moneys over to  
27 the company for insurance contracts sold by the agency;

28 (e) The death or disability of the agent; and

29 (f) Upon the company becoming insolvent or discon-  
30 tinuing any line of insurance for any business purpose:  
31 *Provided*, That the insurance commissioner shall notify or  
32 cause to be notified in writing all agents of such insolvent  
33 insurance company that they are no longer entitled to  
34 any benefit under their contract with the insolvent com-  
35 pany.

**§33-12A-4. Notice of cancellation void in certain cases.**

1 If, upon receipt by the insurance agent of the notice  
2 of proposed cancellation provided by the preceding sec-  
3 tion, the insurance agent prior to the established can-  
4 cellation date as stated in the notice rectifies or eliminates  
5 the stated ground constituting "good cause" for cancella-  
6 tion of the contract, the notice shall be void.

**§33-12A-5. Violation of provisions of this article; statute of limitations.**

1 If any insurance company cancels, refuses to renew  
2 or otherwise terminates the contractual relationship with  
3 any agent in violation of the provisions of this article,  
4 the agent who has been damaged thereby has a cause of  
5 action against the insurance company for specific per-  
6 formance, injunctive relief or for damages sustained by  
7 the plaintiff as a result of the termination of the relation-  
8 ship, including ascertainable loss of goodwill as a result  
9 of the termination of the relationship: *Provided*, That any  
10 action brought by an insurance agent against an insur-  
11 ance company for wrongful termination of the con-  
12 tractual relationship shall be commenced within two  
13 years after such wrongful termination.

## CHAPTER 99

(H. B. 1267—By Delegate Shiflet and Delegate Riffle)

[Passed February 28, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen, relating to determining the insurance premium rates on residential dwellings within the state; commercial activities conducted within a dwelling.

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

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

### ARTICLE 20. RATES AND RATING ORGANIZATIONS.

#### §33-20-17. Determination of rates on dwellings.

- 1 For the purpose of determining the proper premium to be
- 2 charged for coverage issued upon a dwelling situated in the
- 3 state, commercial activities conducted by the insured shall
- 4 not be taken into consideration by the insurer unless conducted
- 5 within the dwelling.

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## CHAPTER 100

(H. B. 1270—By Delegate Shiflet)

[Passed February 24, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty-nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to law-enforcement officer training and certification; definitions; special conservation officers excluded.

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

That section one, article twenty-nine, 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 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.**

**§30-29-1. Definitions.**

1 For purposes of this article, unless a different meaning  
2 clearly appears in the context:

3 "Approved law-enforcement training academy" means any  
4 training facility which is approved and authorized to conduct  
5 law-enforcement training as provided in this article;

6 "Chief executive" means the superintendent of the depart-  
7 ment of public safety; the chief conservation officer, depart-  
8 ment of natural resources; the sheriff of any West Virginia  
9 county; or the chief of any West Virginia municipal law-  
10 enforcement agency;

11 "County" means the fifty-five major political subdivisions  
12 of the state;

13 "Exempt rank" means any noncommissioned or commis-  
14 sioned rank of sergeant or above;

15 "Governor's committee on crime, delinquency and correc-  
16 tion" or "governor's committee" means the governor's com-  
17 mittee on crime, delinquency and correction established as  
18 a state planning agency pursuant to section one, article nine,  
19 chapter fifteen of this code;

20 "Law-enforcement officer" means any duly authorized mem-  
21 ber of a law-enforcement agency who is authorized to maintain  
22 public peace and order, prevent and detect crime, make ar-  
23 rests, and enforce the laws of the state or any county or  
24 municipality thereof, other than parking ordinances. As used  
25 in this article, the term "law-enforcement officer" does not  
26 apply to the chief executive of any West Virginia law-enforce-  
27 ment agency or any watchman, college campus security per-  
28 sonnel or special conservation officer;

29 "Law-enforcement official" means the duly appointed chief  
30 administrator of a designated law-enforcement agency or a  
31 duly authorized designee;

32 "Municipality" means any incorporated town or city whose  
33 boundaries lie within the geographic boundaries of the state;

34 "Subcommittee" or "law-enforcement training subcommit-  
35 tee" means the subcommittee of the governor's committee on  
36 crime, delinquency and correction created by section two of  
37 this article; and

38 "West Virginia law-enforcement agency" means any duly  
39 authorized state, county or municipal organization employ-  
40 ing one or more persons whose responsibility is the enforce-  
41 ment of laws of the state or any county or municipality  
42 thereof.

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## CHAPTER 101

(H. B. 1280—By Delegate Albright)

[Passed February 24, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compensation for employees of a law-enforcement agency while in attendance at a law-enforcement training academy; providing that the compensation shall be at the regular rate to which the person would be entitled for a forty-hour workweek in regular employment with the agency; and allowing agreements for reimbursements by employees training but not continuing employment.

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

That section eight, article twenty-nine, 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 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.****§30-29-8. Compensation for employees attending law-enforcement training academy; limitations; agreements to reimburse employers for wages and expenses of employees trained but not continuing employment.**

1 A West Virginia law-enforcement agency shall pay com-  
2 pensation to employees, including wages, salaries, benefits,  
3 tuition and expenses for the employees' attendance at a law-  
4 enforcement training academy. The compensation paid to the  
5 employees of a law-enforcement agency for attendance at a  
6 law-enforcement training academy as provided in this section  
7 shall not include overtime compensation under the provisions  
8 of section three, article five-c, chapter twenty-one of this code,  
9 and shall be at the regular rate to which the employee would  
10 be entitled for a workweek of forty hours in regular em-  
11 ployment with the agency. In consideration for such com-  
12 pensation, the county commission or municipal government  
13 may require of its employees by written agreement entered into  
14 with each of them in advance of such attendance at a training  
15 academy that, if an employee should voluntarily discontinue  
16 employment any time within one year immediately following  
17 completion of the training curriculum, he or she shall be  
18 obligated to pay to such county commission or municipal  
19 government a pro rata portion of the sum of such com-  
20 pensation equal to that part of such year which the em-  
21 ployee has chosen not to remain in the employ of the county  
22 commission or municipal government.

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**CHAPTER 102**

(Com. Sub. for H. B. 1333—By Delegate Murphy and Delegate Doyle)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article three, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to



definitions and general provisions of newspaper legal advertising; redefining the term "qualified newspaper"; establishing rates for newspaper legal advertising; filing affidavits with the secretary of state; notifying county commissions, boards of education and municipalities.

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

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

**ARTICLE 3. NEWSPAPERS AND LEGAL ADVERTISEMENTS.**

§59-3-1. Definitions and general provisions.

§59-3-3. Rates for legal advertisements; computation; filing affidavits with secretary of state.

**§59-3-1. Definitions and general provisions.**

1 (a) As used in this article, elsewhere in this code or in  
2 any other provision of law:

3 (1) "Legal advertisement" means any notice, advertise-  
4 ment, statement, information or other matter required by law  
5 or court to be published.

6 (2) "Publication area" means the area or areas for which  
7 a legal advertisement is required by law or court to be made.

8 (3) "Once a week for two successive weeks" means two  
9 publications of a legal advertisement in a qualified newspaper  
10 occurring within a period of fourteen consecutive days with  
11 at least an interval of six full days within such period between  
12 the date of the first publication and the date of the second  
13 publication.

14 (4) "Once a week for three successive weeks" means three  
15 publications of a legal advertisement in a qualified newspaper  
16 occurring within a period of twenty-one consecutive days with  
17 at least an interval of six full days within such period be-  
18 tween the date of the first publication and the date of the  
19 second publication and with at least an interval of six full  
20 days within such period between the date of the second  
21 publication and the date of the third publication.

22 (5) "Publication date" means the date on which a quali-  
23 fied newspaper is first placed in circulation.

24 (6) "General circulation" means not only a newspaper  
25 meeting the other qualifications specified in subsection (b)  
26 of this section and circulated among and of interest to the  
27 general public in the area in which it circulates, but also  
28 a newspaper meeting said other qualifications, the actual  
29 circulation of which throughout the publication area is large  
30 enough to give basis for a reasonable belief that publication  
31 of a legal advertisement therein will give effective notice to  
32 the residents of the publication area.

33 (b) Wherever the term "qualified newspaper" or "qualified  
34 newspapers" is used in this article, or the term "newspaper"  
35 or "newspapers" is used elsewhere in this code or in any other  
36 provision of law in connection with a legal advertisement as  
37 herein defined, the terms shall be taken to mean only a  
38 newspaper or newspapers, as the case may be, published (un-  
39 less otherwise expressly provided) in the state of West Vir-  
40 ginia, and which meet the following qualifications:

41 (1) Any such newspaper must be of regular issue and  
42 must have a bona fide, general circulation in the publication  
43 area. A newspaper shall be deemed to be of regular issue if  
44 it is published regularly, as frequently as once a week, for at  
45 least fifty weeks during the calendar year as prescribed by  
46 its mailing permit, and (a) has been so published for at least  
47 one year immediately preceding the date on which the legal  
48 advertisement is delivered to the newspaper for publication,  
49 or (b) has suspended publication on or within one year  
50 immediately preceding the effective date of this section, and  
51 has reinstated publication within two years of the date of  
52 suspension, and was published for at least one year immedi-  
53 ately preceding the date of suspension. A newspaper shall be  
54 deemed to be of bona fide, general circulation in the publica-  
55 tion area if it meets the definition of "general circulation" as  
56 defined above and is circulated to the general public at a  
57 definite price or consideration.

58 (2) Any such newspaper must bear a title or name, con-  
59 sist of not less than four pages without a cover, and be a

60 newspaper to which the general public resorts for passing  
61 events of a political, religious, commercial and social nature,  
62 and for current happenings, announcements, miscellaneous  
63 reading matters, advertisements and other notices.

64 (c) Notwithstanding any other provision of this code or  
65 law to the contrary, a qualified newspaper shall for all pur-  
66 poses be considered to be published where it is first placed in  
67 circulation.

**§59-3-3. Rates for legal advertisements; computation; filing affidavits with secretary of state.**

1 (a) The rates which a publisher or proprietor of a quali-  
2 fied newspaper in West Virginia may charge and receive for  
3 a single or first publication of any legal advertisement set  
4 solid shall depend upon the bona fide circulation of such  
5 newspaper, as follows:

6 (1) Four cents per word if the qualified newspaper has  
7 reinstated publication within the limits prescribed by  
8 subdivision (1), subsection (b), section one of this article,  
9 less than two years immediately preceding the date on  
10 which a legal advertisement is delivered to the newspaper for  
11 publication and has a bona fide circulation of less than one  
12 thousand;

13 (2) Two cents per word if the qualified newspaper has  
14 a bona fide circulation of one thousand or less, except as  
15 provided in subdivision (1), subsection (a) of this section;

16 (3) Five cents per word if the qualified newspaper has  
17 a bona fide circulation of one thousand to ten thousand;

18 (4) Six and one-fourth cents per word if the qualified  
19 newspaper has a bona fide circulation of more than ten  
20 thousand but less than forty thousand; or

21 (5) Seven and one-fourth cents per word if the qualified  
22 newspaper has a bona fide circulation of forty thousand or  
23 more.

24 (b) In computing the number of words in a legal advertise-  
25 ment, not set solid, the basis shall be upon the size of type  
26 in which legal advertising is set by the qualified newspaper  
27 making the publication, and shall be computed at the legal

28 rate as though the matter was solid type, that is to say, on the  
29 basis of eighty-four words to the single column inch in six  
30 point type, and fifty-four words to the single column inch in  
31 eight point type and any other size type in proportion.

32 (c) In determining the cost of a legal advertisement which  
33 is to appear more than once in the same qualified newspaper,  
34 the cost for the first publication shall be computed as speci-  
35 fied in subsections (a) and (b) of this section, and the cost  
36 of the second and each subsequent publication shall be  
37 seventy-five percent of the cost of the first publication com-  
38 puted as aforesaid.

39 (d) The rates provided for in this section may be charged  
40 on and after the first day of July, one thousand nine hundred  
41 eighty-four. Between the effective date of this section and  
42 the said first day of July, one thousand nine hundred eighty-  
43 four, the rates for publishing legal advertisements shall be  
44 those in effect immediately prior to the effective date of this  
45 section. The average bona fide circulation stated by each  
46 qualified newspaper in the statement filed by such newspaper  
47 with the United States post-office department in November,  
48 one thousand nine hundred eighty-three, shall control the rate  
49 circulation classification of such qualified newspaper for the  
50 period from the first day of July, one thousand nine hundred  
51 eighty-four, until the first day of July, one thousand nine  
52 hundred eighty-five. On or before the first day of November,  
53 one thousand nine hundred eighty-four, the publisher or  
54 proprietor of each newspaper desiring to publish any legal  
55 advertisement during the ensuing fiscal year shall file with  
56 the secretary of state an affidavit stating the average bona  
57 fide circulation of such newspaper during the preceding calen-  
58 dar year, and sufficient facts shall be set forth in the affidavit  
59 to show whether such newspaper is a qualified newspaper.  
60 The average bona fide circulation stated in such affidavit by  
61 each qualified newspaper shall control the rate circulation  
62 classification of such qualified newspaper for the ensuing  
63 fiscal year, beginning on the first day of July, one thousand  
64 nine hundred eighty-five. The publisher or proprietor of each  
65 newspaper desiring to publish any legal advertisement during  
66 the ensuing fiscal year shall file an affidavit as aforesaid  
67 on or before the first day of November of each succeeding

68 year, and such affidavit shall control the rate circulation  
69 classification of such newspaper, if it is a qualified news-  
70 paper, for the ensuing fiscal year. Any qualified newspaper,  
71 for which the required affidavit is not filed on or before the  
72 first day of March of any calendar year after the year one  
73 thousand nine hundred eighty-five, shall be conclusively  
74 presumed to have for the ensuing fiscal year a bona fide  
75 circulation of less than one thousand. At the time a publisher  
76 or proprietor of a qualified newspaper files an affidavit with  
77 the secretary of state, as aforesaid, such publisher or pro-  
78 prietor shall notify the clerk of the county commission and  
79 the board of education of the county in which such qualified  
80 newspaper is published of the circulation classification of such  
81 qualified newspaper and of the applicable rate for publishing  
82 legal advertisements in such qualified newspaper during the  
83 ensuing fiscal year. If the qualified newspaper is published  
84 in a municipality, the publisher or proprietor shall at the  
85 same time also furnish the same notification to the clerk or  
86 recorder of such municipality.

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## CHAPTER 103

(H. B. 2082—By Delegate Polan and Delegate Teets)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two through nine, inclusive, article two-a, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to implementing the recommendations of the resolution of the citizens legislative compensation commission, dated the twenty-second day of December, one thousand nine hundred eighty-two, with such commission being created by article six, section thirty-three of the constitution of West Virginia; and relating to the compensation for and expenses of members of the Legislature effective for calendar year one thousand nine hundred eighty-five, and each calendar year thereafter.

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

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

**ARTICLE 2A. COMPENSATION FOR AND EXPENSES OF MEMBERS OF THE LEGISLATURE.**

**PART II. COMPENSATION.**

- §4-2A-2. Basic compensation for services; proration.
- §4-2A-3. Compensation for members of the Legislature during any extension of regular session or during extraordinary session.
- §4-2A-4. Additional compensation for president of Senate, speaker of House of Delegates, majority leaders and minority leaders of both houses.
- §4-2A-5. Interim compensation for members of joint committee on government and finance and commission on interstate cooperation and for restructured interim meetings.

**PART III. EXPENSES.**

- §4-2A-6. Travel expenses.
- §4-2A-7. Reimbursement for expenses incurred during any session.
- §4-2A-8. Interim expenses.
- §4-2A-9. Out-of-tate expenses.

**PART II. COMPENSATION.**

**§4-2A-2. Basic compensation for services; proration.**

1 (a) Each member of the Legislature shall receive as basic  
 2 compensation for his services the sum of five thousand one  
 3 hundred thirty-six dollars per calendar year through calendar  
 4 year one thousand nine hundred eighty-four. Each member of  
 5 the Legislature shall receive as basic compensation for his  
 6 services the sum of six thousand five hundred dollars per  
 7 calendar year for calendar year one thousand nine hundred  
 8 eighty-five, and for each calendar year thereafter. In addi-  
 9 tion to such basic compensation, members shall receive the  
 10 additional compensations as are expressly provided for in  
 11 sections three, four and five of this article.

12 The increased basic compensation as set forth in this  
 13 subsection and all other increased amounts or new amounts  
 14 in respect to the compensation or expenses of members of  
 15 the Legislature, set forth in the resolution of the citizens  
 16 legislative compensation commission, dated the twenty-second

17 day of December, one thousand nine hundred eighty-two, and  
18 implemented in sections two through nine of this article  
19 providing for new amounts or amounts increased to new  
20 amounts greater than those in force and effect on the first day  
21 of January, one thousand nine hundred eighty-four, shall all  
22 become effective only for calendar year one thousand nine  
23 hundred eighty-five, and each calendar year thereafter.

24 (b) Beginning in the year one thousand nine hundred  
25 eighty, and each year thereafter, such basic compensation  
26 shall be payable twice a month during each regular session  
27 of the Legislature, without regard to any extension of such  
28 regular session. In the event of the death, resignation or  
29 removal of a member of the Legislature during a regular  
30 session of the Legislature and the appointment and qualifica-  
31 tion of his successor during any such regular session, the basic  
32 compensation provided for in this section shall be prorated  
33 between the original member and his successor on the basis  
34 of the number of days served (including Saturdays and Sun-  
35 days) as a member of the Legislature by each during such  
36 regular session of sixty calendar days.

37 (c) In the event of the death, resignation or removal of  
38 a member of the Legislature and the appointment and  
39 qualification of his successor subsequent to the regular session  
40 of the Legislature held in the calendar year in which such  
41 successor was appointed and qualified, none of the basic  
42 compensation provided for in this section shall be paid to  
43 such successor.

**§4-2A-3. Compensation for members of the Legislature during any  
extension of regular session or during extraordinary  
session.**

1 Each member of the Legislature shall receive, in addition to  
2 the basic compensation provided for in section two of this  
3 article, additional compensation of fifty dollars per day for  
4 each day of attendance in person upon any business of the  
5 Senate or House of Delegates, as the case may be, on each day  
6 upon which the Senate or House of Delegates is actually called  
7 to order during each extension of regular session or during  
8 extraordinary session of the Legislature. Such additional

9 compensation shall be paid from time to time during any  
10 such extended session or extraordinary session, as may be  
11 prescribed by rules established by the legislative auditor.

**§4-2A-4. Additional compensation for president of Senate, speaker  
of House of Delegates, majority leaders and minority  
leaders of both houses.**

1 (a) In addition to the basic and additional compensation  
2 provided for in sections two and three of this article, the  
3 president of the Senate and the speaker of the House of  
4 Delegates shall each receive additional compensation of:

5 (1) Fifty dollars per day for each day actually served during  
6 any regular, extension of regular or extraordinary session as  
7 presiding officer, including Saturdays and Sundays; and

8 (2) One hundred dollars per day up to a maximum of  
9 eighty such days per calendar year for attending to legislative  
10 business in their offices in the Capitol building when the  
11 Legislature is not in regular, extension of regular or extra-  
12 ordinary session and interim committees are not meeting.

13 (b) In addition to the basic and additional compensation  
14 provided for in sections two and three of this article, the  
15 majority leaders and minority leaders of the Senate and of the  
16 House of Delegates shall each receive additional com-  
17 pensation of twenty-five dollars per day for each day actually  
18 served during any regular, extension of regular or during  
19 extraordinary session, including Saturdays and Sundays, as  
20 the selected legislative leaders of their respective political  
21 parties.

22 (c) Such presiding officer and majority and minority leader  
23 compensation shall be paid from time to time during any such  
24 session or interim period, as the case may be, as may be  
25 prescribed by rules established by the legislative auditor.

**§4-2A-5. Interim compensation for members of joint committee  
on government and finance and commission on inter-  
state cooperation and for restructured interim meetings.**

1 (a) In addition to the basic and any additional and  
2 presiding officer and majority and minority leader compensa-



3 tion provided for in sections two, three and four of this  
4 article, each member of the joint committee on government and  
5 finance and the commission on interstate cooperation shall re-  
6 ceive interim compensation of fifty dollars per day for each  
7 day actually engaged in the performance of interim duties  
8 as a member of either such committee or commission between  
9 regular sessions of the Legislature: *Provided*, That not more  
10 than twenty-eight members combined of both such committee  
11 and commission shall be entitled to receive the interim com-  
12 pensation authorized in this section, and the total additional  
13 interim compensation payable to any such member and his  
14 replacement, if any, on such committee or commission under  
15 the provisions of this section shall not exceed the sum of one  
16 thousand five hundred dollars per calendar year.

17 (b) If, for whatever reason, the Legislature should re-  
18 structure its interim committee meetings along any lines  
19 whatsoever, the interim compensation authorized in sub-  
20 section (a) of this section for members of the joint com-  
21 mittee on government and finance and of the commission on  
22 interstate cooperation and the additional interim compensation  
23 authorized in this subsection may be authorized as interim  
24 compensation by the Legislature as it may determine, but  
25 not to exceed either fifty dollars per member of the Legislature  
26 per day for each day actually engaged in the performance of  
27 interim duties as a member of the Legislature, or a total of  
28 one thousand five hundred dollars per calendar year for any  
29 one member, or a total of sixty-five thousand dollars per  
30 calendar year for all such interim compensation for the mem-  
31 bers of both houses of the Legislature combined.

### PART III. EXPENSES.

#### §4-2A-6. Travel expenses.

1 Each member of the Legislature shall be entitled to be  
2 reimbursed, upon submission of an expense voucher, for ex-  
3 penses incurred incident to travel in the performance of his  
4 duties as a member of the Legislature or any committee of  
5 the Legislature, whether such committee is operating under  
6 general law or resolution, including, but not limited to, at-  
7 tendance at party caucuses held in advance of the date of

8 the assembly of the Legislature in regular session in odd-  
9 numbered years for the purpose of selecting candidates for  
10 officers of the two houses, at the rate of twenty cents per  
11 mile for the most direct usually traveled route, if travel  
12 is by private automobile, or for actual transportation costs  
13 for direct route travel, if travel is by public carrier, or for  
14 any combination of such means of transportation actually  
15 used, plus the cost of necessary taxi or limousine service, tolls  
16 and parking fees in connection therewith, but during any  
17 regular, extension of regular or extraordinary session, travel  
18 expenses shall not be paid to any member for more than one  
19 round trip to and from the seat of government and to and  
20 from his place of residence for each week of any such session.

21 In addition to the above travel expense, the president  
22 of the Senate and the speaker of the House of Delegates  
23 shall be entitled to be reimbursed as provided above, upon  
24 submission of an expense voucher, for expenses incurred  
25 incident to travel for up to a maximum of eighty days per  
26 calendar year in connection with their visits to the capitol  
27 building for business which is related to their duties as pre-  
28 siding officers of the respective houses of the Legislature, but  
29 which takes place when the Legislature is not in regular, ex-  
30 tension of regular or extraordinary session and interim com-  
31 mittees are not meeting.

**§4-2A-7. Reimbursement for expenses incurred during any session.**

1 In addition to reimbursement for any travel expenses, as pro-  
2 vided for in section six of this article, each member of the Leg-  
3 islature shall also be entitled to be reimbursed, upon submis-  
4 sion of an expense voucher therefor, for all reasonable and  
5 necessary expenses actually incurred in connection with any reg-  
6 ular, extension of regular or extraordinary session of the Leg-  
7 islature, but the total of any and all such reimbursed expenses,  
8 exclusive of reimbursement for any such travel expenses as  
9 aforesaid, shall not exceed housing expenses of forty dollars per  
10 day and meal and miscellaneous expenses of thirty dollars per  
11 day. An additional housing expense allowance of twenty-five  
12 dollars per day shall be received by the president of the Senate  
13 and the speaker of the House of Delegates, but only during the  
14 regular or an extension of the regular sessions of the Legisla-

15 ture. A receipt for the amount paid for housing expenses shall  
16 be submitted with the expense voucher, but a receipt shall not  
17 be required to be submitted with any such expense voucher for  
18 meal and miscellaneous expenses. The Legislature may provide  
19 for direct billing of housing expenses of legislators to be  
20 made to the Legislature from recognized hotels or motels. In  
21 lieu of reimbursement for housing expenses pursuant to the  
22 provisions of this section, any member of the Legislature shall  
23 be entitled to be reimbursed, upon submission of an expense  
24 voucher, for expenses incurred incident to daily travel to and  
25 from his place of residence and to and from the seat of govern-  
26 ment at a rate of twenty cents per mile for the most direct  
27 usually traveled route, but the total of such daily travel ex-  
28 penses shall not exceed forty dollars per night.

#### §4-2A-8. Interim expenses.

1 In addition to reimbursement for any travel expenses and  
2 any such reimbursements for any and all such session ex-  
3 penses as provided for in sections six and seven of this  
4 article, each member of the Legislature serving as a member  
5 of any committee of the Legislature established by and  
6 operating under general law and designated for the per-  
7 formance of interim assignments by the Legislature or other-  
8 wise duly authorized to perform interim assignments be-  
9 tween regular sessions of the Legislature shall also be en-  
10 titled to be reimbursed, upon submission of an expense voucher  
11 therefor, for all reasonable and necessary expenses actually  
12 incurred incident to the performance of duties as a member  
13 of any such committee, but the total of any and all such  
14 reimbursed interim expenses, exclusive of reimbursement for  
15 any such travel and session expenses as aforesaid, shall not  
16 under any circumstances exceed housing expenses of forty  
17 dollars per day and meal and miscellaneous expenses of  
18 thirty dollars per day for each day actually engaged in the  
19 performance of interim duties as a member of any such  
20 committee. The president of the Senate and the speaker of  
21 the House of Delegates shall be entitled to be reimbursed  
22 for housing expenses and for meal and miscellaneous expenses  
23 incurred in connection with their visits to the capitol building  
24 for business which is related to their duties as presiding

25 officers of the respective houses of the Legislature, but which  
26 takes place when the Legislature is not in regular, extension  
27 of regular or extraordinary session and interim committees are  
28 not meeting, not to exceed housing expenses of forty dollars per  
29 day and meal and miscellaneous expenses of thirty dollars per  
30 day up to a maximum of eighty such days per calendar year.  
31 A receipt for the amount paid for housing shall be submitted  
32 with the expense voucher, but a receipt shall not be required  
33 to be submitted with any such expense voucher for meal and  
34 miscellaneous expenses. In lieu of reimbursement for housing  
35 expenses pursuant to the provisions of this section, any member  
36 of the Legislature shall be entitled to be reimbursed, upon sub-  
37 mission of an expense voucher, for expenses incurred in-  
38 cident to daily travel to and from his place of residence and  
39 to and from the seat of government at a rate of twenty cents  
40 per mile for the most direct usually traveled route, but the  
41 total of such daily travel expenses shall not exceed forty dol-  
42 lars per night.

**§4-2A-9. Out-of-state expenses.**

1 In addition to reimbursement for travel expenses as autho-  
2 rized in section six of this article, each member of the Legisla-  
3 ture traveling from West Virginia to an out-of-state point or  
4 points and return incident to the performance of his duties as a  
5 member of the Legislature or any committee of the Legislature,  
6 whether such committee is operating under general law or reso-  
7 lution, which travel has been duly authorized, shall be entitled  
8 to be reimbursed, upon submission of any expense voucher  
9 therefor, for all reasonable and necessary expenses actually in-  
10 curred incident thereto, but the total of any and all such reim-  
11 bursed expenses, exclusive of reimbursement for such travel ex-  
12 penses, shall not under any circumstances exceed the actual cost  
13 of housing at the least expensive available single rate and meal  
14 and miscellaneous expenses of thirty dollars per day. A receipt  
15 for the amount paid for housing and for travel by any public  
16 transportation to and from West Virginia shall be submitted  
17 with the expense voucher, but a receipt shall not be required  
18 to be submitted with any such expense voucher for meal and  
19 miscellaneous expenses.

## CHAPTER 104

(S. B. 425—By Senator Nelson)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections sixteen (one) (seven), sixteen (twenty) (five), nineteen (twenty-three) (six), twenty (five-a) (three) and twenty (five-e) (six), article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two by adding thereto thirty-two new sections, designated sections five (sixteen) (eighteen), eleven (one-a) (eleven), twelve (one) (two), twelve (two) (two), twelve (six) (five), fifteen (two) (twenty-five), sixteen (two-e) (three), sixteen (twenty-nine-b) (eight), seventeen-c (five-a) (two), seventeen-c (five-a) (three), seventeen-d (two-a) (eight), nineteen (two) (five), nineteen (two-c) (five), twenty (five-e) (seven), twenty (five-f) (four), twenty (six) (two), twenty (six) (thirty-eight), twenty-one (three) (eighteen), twenty-two (four) (thirteen), twenty-three (four-c) (three), twenty-seven (nine) (one), twenty-seven (seventeen) (three), twenty-nine (three) (five), thirty (three) (seven), thirty (seven) (four), thirty (twenty-three) (five), thirty-one-a (two) (four), thirty-one-a (four) (twenty-six), thirty-two (four) (four hundred two), thirty-two (four) (four hundred twelve), thirty-three (two) (ten) and thirty-three (twenty) (fifteen), all relating generally to legislative mandate or authorization for the promulgation of certain legislative rules by various executive agencies of the state; authorizing certain of such agencies to promulgate certain legislative rules in the form that such rules were filed in the state register; authorizing certain of such agencies to promulgate legislative rules as amended by the Legislature; directing certain agencies to promulgate in accordance with rules filed in the office of the secretary of state by the clerk of the House of Delegates; authorizing the public employees insurance board to promulgate legislative rules for the purpose of regulating the public employees insurance program and defining certain

terms with respect thereto; authorizing the state tax commissioner to promulgate certain legislative rules for the purpose of appraisal of property for periodic statewide reappraisals for ad valorem property tax purposes; authorizing the state board of investments to promulgate certain legislative rules for the purpose of selection of state depositories for the disbursement of accounts through competitive bidding; authorizing the state treasurer to promulgate certain legislative rules for the purpose of the establishment of imprest funds; authorizing the state board of investments to promulgate certain legislative rules for the purpose of administration of the consolidated fund; authorizing the department of public safety to promulgate certain legislative rules for the purpose of providing general orders; authorizing the state board of health to promulgate certain legislative rules for the purposes of trauma center or facility designation, of well water regulation, of providing procedures for recovery of corneal tissue for transplant, and of birthing center licensure; authorizing the air pollution control commission to promulgate certain legislative rules for the purposes of permits for construction and modification of stationary sources of air pollution for the prevention of significant deterioration, of emission standards for hazardous air pollutants and of standards of performance for new stationary sources; authorizing the health care cost review authority to promulgate certain legislative rules for the purposes of a limitation on hospital gross patient revenue and of a freeze on hospital rates and granting temporary rate increases; authorizing the commissioner of motor vehicles to promulgate certain legislative rules with respect to driving under the influence of alcohol or drugs, drivers' license revocation and certain administrative hearings, for the purposes of the safety and treatment program and of compulsory insurance; authorizing the commissioner of agriculture to promulgate certain legislative rules for the purposes of providing a schedule of charges for inspection services for fruit, of licensing auctioneers, of regulating greyhound racing and of regulating thoroughbred horse racing; authorizing the water resources board to promulgate certain legislative rules for the purposes of special regulations, of ground water protection standards, and of providing a state national

pollutant discharge elimination system program; directing the water resources board to adopt certain rules relating to water quality standards in conformity with rules filed in the office of the secretary of state by the executive secretary of the state water resources board; authorizing the department of natural resources and the air pollution control commission to promulgate certain legislative rules for the purposes of hazardous waste management and to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities, respectively; authorizing the commissioner of highways to promulgate certain legislative rules for the purpose of regulating the transportation of hazardous waste by highway transporters; authorizing the department of natural resources to promulgate certain legislative rules for the purpose of regulating surface mining; authorizing the department of mines to promulgate certain legislative rules for the purpose of governing the safety of those persons employed in and around surface mines; authorizing the department of labor to promulgate certain legislative rules for the purpose of implementing the hazardous chemical substances act; authorizing the office of oil and gas of the department of mines to promulgate certain legislative rules relating to the regulation of oil, gas and certain other wells; authorizing the workers' compensation commissioner to promulgate certain legislative rules for the purpose of the employers' excess liability fund; authorizing the state board of health to promulgate certain legislative rules for the purpose of licensure of behavioral health centers; authorizing the state fire commission to promulgate certain legislative rules for the purpose of providing a state fire code; authorizing the board of medicine to promulgate certain legislative rules relating to the practice of medicine, certain licensing disciplinary and complaint procedures, and the regulation of the practice of podiatry and of physician assistants; authorizing the board of examiners for registered professional nurses to promulgate certain legislative rules for the purpose of setting qualifications of graduates of foreign nursing schools for admission to the professional nurse licensing examination; authorizing the radiologic technology board of examiners to promulgate certain legislative rules for the purpose of regulating radiologic

technologists; authorizing the commissioner of banking to promulgate certain legislative rules for the purposes of regulating consumer credit sales and the legal lending limit; authorizing state auditor, as securities commissioner, to promulgate certain legislative rules for the purpose of regulating broker-dealers, agents and investment advisors; authorizing the insurance commissioner to promulgate certain legislative rules for the purpose of regulating excess line brokers; and authorizing the board of risk and insurance management to promulgate certain legislative rules regulating mine subsidence insurance.

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

That sections sixteen (one) (seven), sixteen (twenty) (five), nineteen (twenty-three) (six), twenty (five-a) (three) and twenty (five-e) (six), article two, chapter sixty-four 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 thirty-two new sections, designated sections five (sixteen) (eighteen), eleven (one-a) (eleven), twelve (one) (two), twelve (two) (two), twelve (six) (five), fifteen (two) (twenty-five), sixteen (two-e) (three), sixteen (twenty-nine-b) (eight), seventeen-c (five-a) (two), seventeen-c (five-a) (three), seventeen-d (two-a) (eight), nineteen (two) (five), nineteen (two-c) (five), twenty (five-e) (seven), twenty (five-f) (four), twenty (six) (two), twenty (six) (thirty-eight), twenty-one (three) (eighteen), twenty-two (four) (thirteen), twenty-three (four-c) (three), twenty-seven, (nine) (one), twenty-seven (seventeen) (three), twenty-nine (three) (five), thirty (three) (seven), thirty (seven) (four), thirty (twenty-three) (five) thirty-one-a (two) (four), thirty-one-a (four) (twenty-six), thirty-two (four) (four hundred two), thirty-two (four) (four hundred twelve), thirty-three (two) (ten) and thirty-three (twenty) (fifteen), all to read as follows:

**ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.**

- §64-2-5 (16) (18). Public employees insurance board.
- §64-2-11 (1a) (11). State tax commissioner.
- §64-2-12 (1) (2). State board of investments.
- §64-2-12 (2) (2). State treasurer.
- §64-2-12 (6) (5). State board of investments.
- §64-2-15 (2) (25). Department of public safety.



§64-2-16 (1) (7).	State board of health.
§64-2-16 (2e) (3).	State board of health.
§64-2-16 (20) (5).	Air pollution control commission.
§64-2-16 (29b) (8).	Health care cost review authority.
§64-2-17c (5a) (2).	Commissioner of motor vehicles.
§64-2-17c (5a) (3).	Department of motor vehicles.
§64-2-17d (2a) (8).	Commissioner of motor vehicles.
§64-2-19 (2) (5).	Commissioner of agriculture.
§64-2-19 (2c) (5).	Commissioner of agriculture.
§64-2-19 (23) (6).	West Virginia racing commission.
§64-2-20 (5a) (3).	Water resources board.
§64-2-20 (5e) (6).	Department of natural resources.
§64-2-20 (5e) (7).	Commissioner of highways.
§64-2-20 (5f) (4).	Department of natural resources.
§64-2-20 (6) (2).	Department of natural resources.
§64-2-20 (6) (38).	Department of mines.
§64-2-21 (3) (18).	Department of labor.
§64-2-22 (4) (13).	Office of oil and gas, department of mines.
§64-2-23 (4c) (3).	Workers' compensation commissioner.
§64-2-27 (9) (1).	State board of health.
§64-2-27 (17) (3).	State board of health.
§64-2-29 (3) (5).	State fire commission.
§64-2-30 (3) (7).	Board of medicine.
§64-2-30 (7) (4).	Board of examiners for registered professional nurses.
§64-2-30 (23) (5).	Radiologic technology board of examiners.
§64-2-31a (2) (4).	Commissioner of banking.
§64-2-31a (4) (26).	Commissioner of banking.
§64-2-32 (4) (402).	State auditor, securities commissioner.
§64-2-32 (4) (412).	State auditor, securities commissioner.
§64-2-33 (2) (10).	Insurance commissioner.
§64-2-33 (20) (15).	Board of risk and insurance management.

**§64-2-5(16) (18). Public employees insurance board.**

1 The legislative rules filed in the state register on the  
 2 sixteenth day of May, one thousand nine hundred eighty-  
 3 three, relating to the public employees insurance board  
 4 (public employees insurance plan) are authorized with the  
 5 amendments set forth below:

6 §2.01(b) shall read as follows:

7 (b) "Children" shall mean unmarried children between  
 8 birth and age nineteen and shall include: (1) The employee's  
 9 natural children, (2) legally adopted children, including  
 10 children living with the employee during the period of  
 11 probation, (3) stepchildren residing in the employee's  
 12 household and (4) other children fully dependent upon the

13 employee for support and maintenance and residing in the  
 14 household of which the employee is head and actually being  
 15 supported by the employee. Children may be included after  
 16 the attainment of age nineteen, but not beyond the  
 17 attainment of age twenty-five, if they are enrolled as full-  
 18 time students, are unmarried and are fully dependent upon  
 19 the employee for support. Children may also be included  
 20 after the attainment of age nineteen while incapable of  
 21 self-support because of a mental illness, mental retardation  
 22 or a physical disability, if the child was dependent upon the  
 23 employee for support and maintenance at the onset of the  
 24 mental illness, mental retardation or physical disability.

25 §6.03.—In the second sentence delete the words  
 26 “Executive Secretary” and insert the word “Board.”

27 On page 11, insert a new section as follows:

28 “§5.07.—Coverage for dependents shall terminate at the  
 29 end of the month in which they no longer meet the definition  
 30 of ‘dependent’ set forth in section 2.01 of these rules.”

**§64-2-11(1a) (11). State tax commissioner.**

1 The legislative rules filed in the state register on the fifth  
 2 day of January, one thousand nine hundred eighty-four,  
 3 relating to the state tax commissioner (appraisal of  
 4 property for periodic statewide reappraisals for ad valorem  
 5 property tax purposes), are authorized with the  
 6 amendments set forth below:

7 Page 8, §11.04(b) (2), definition of “Active Mining  
 8 Property,” at the end of the first paragraph following the  
 9 “period,” by adding the following: “In the application of  
 10 the herein provided valuation formula on ‘active mining  
 11 property,’ the appropriate formula calculation will be  
 12 based upon the actual market to which the coal from that  
 13 tract and seam is currently being sold, whether it is  
 14 ‘metallurgical’ or ‘steam’.”

15 Page 9, §11.04(b) (3), definition of “Active Reserves,” at  
 16 the end of the subsection, following the “period,” by adding  
 17 the following: “In the application of the herein provided  
 18 valuation formula on ‘active reserves,’ the appropriate  
 19 formula calculation will be based upon the actual market to

20 which the coal from that tract and seam is currently being  
21 sold, whether it is 'metallurgical' or 'steam'."

22 Page 11, section 11.04 (b) (11), definition of "Mineable  
23 Coal," by striking the subsection and substituting in lieu  
24 thereof the following: "(11) *Mineable Coal*. Coal which can  
25 be mined under present day mining technology and  
26 economics."

27 Page 25, section 11.04 (c) (2) (C), entitled "Property Tax  
28 Component," by striking the subsection and inserting in  
29 lieu thereof the following: "(C) *Property Tax*  
30 *Component*—This component will be derived by  
31 multiplying the assessment rate by the statewide average of  
32 tax rates on Class III property."

33 Page 30, §11.04(c) (4), entitled "Valuation of Mined-Out/  
34 Unmineable/Barren Coal Properties," by striking the  
35 numbers "\$5.00" and inserting in lieu thereof the following:  
36 "\$1.00".

37 Page 31, section 11.04 (c) (5) (B), by striking the words and  
38 numbers "Five Dollars (\$5.00)" and inserting in lieu thereof  
39 the following: "One Dollar (\$1.00)".

40 Page 53, section 11.05 (h) by striking the symbol and  
41 figures "\$5.00" and inserting in lieu the following: "\$1.00."

42 Page 73, section 11.06 (h) by striking the symbol and  
43 figures "\$5.00" and inserting in lieu the following: "\$1.00."

44 Page 81, section 11.07 (e) (15) (B) (4) at the end of the  
45 second sentence remove the period after the word  
46 "property" and insert the words "unless the land is used for  
47 some other purpose in which case it will be taxed according  
48 to its actual use."

49 Page 86, section 11.07 (k) delete all of subsection (k).

50 Page 110, section 11.08 (c) (4) by striking the symbol and  
51 figures "\$5.00" and inserting in lieu thereof the following:  
52 "\$1.00."

53 Page 111, section 11.08 (c) (5) (B) by striking the symbol  
54 and figures "\$5.00" and inserting in lieu thereof the  
55 following: "\$1.00."

56 Page 115, §11.09 (a) (3) in the first sentence, insert after  
57 the word "land" the words, "excluding farm land."

**§64-2-12 (1) (2). State board of investments.**

1 The legislative rules filed in the state register on the third  
2 day of January, one thousand nine hundred eighty-four,  
3 relating to the state board of investments (selection of state  
4 depositories for disbursement accounts through  
5 competitive bidding) are authorized.

**§64-2-12 (2) (2). State treasurer.**

1 The legislative rules filed in the state register on the third  
2 day of January, one thousand nine hundred eighty-four,  
3 relating to the state treasurer (establishment of imprest  
4 funds) are authorized.

**§64-2-12 (6) (5). State board of investments.**

1 The legislative rules filed in the state register on the third  
2 day of January, one thousand nine hundred eighty-four,  
3 relating to the state board of investments (administration of  
4 the consolidated fund) are authorized.

**§64-2-15 (2) (25). Department of public safety.**

1 The legislative rules filed in the state register on the  
2 twenty-third day of September, one thousand nine hundred  
3 eighty-three, relating to the department of public safety  
4 (general orders) are authorized with the amendment set  
5 forth below:

6 Page 23, §9.10 remove the period at the end of the  
7 sentence and add the words "or municipalities."

**§64-2-16 (1) (7). State board of health.**

1 (a) The legislative rules filed in the state register on the  
2 second day of June, one thousand nine hundred eighty-two,  
3 relating to the state board of health (waste water treatment  
4 works operations) are authorized.

5 (b) The legislative rules filed in the state register on the  
6 second day of June, one thousand nine hundred eighty-two,  
7 relating to the state board of health (laboratory reporting of  
8 syphilis and gonorrhoea) are authorized.

9 (c) The legislative rules filed in the state register on the  
10 second day of June, one thousand nine hundred eighty-two,  
11 relating to the state board of health (public water supply  
12 operators) with the modification of §11.02 as presented to  
13 the legislative rule-making review committee on the ninth  
14 day of November, one thousand nine hundred eighty-two,  
15 are authorized.

16 (d) The legislative rules filed in the state register on the  
17 twenty-second day of October, one thousand nine hundred  
18 eighty-two, relating to the state board of health (sewage  
19 systems) with the modification presented to the legislative  
20 rule-making review committee on the sixth day of  
21 December, one thousand nine hundred eighty-two, are  
22 authorized except lines ten through seventeen, page eight of  
23 the rules shall be stricken in their entirety and the  
24 remaining paragraphs renumbered. These rules were  
25 proposed by the state board of health pursuant to sections  
26 seven and nine, article one, chapter sixteen of this code.

27 (e) The legislative rules filed in the state register on the  
28 second day of June, one thousand nine hundred eighty-two,  
29 relating to the state board of health (approval of  
30 laboratories) are authorized. These rules were proposed by  
31 the state board of health pursuant to section one, article  
32 seven, chapter sixteen and section six-a, article one,  
33 chapter forty-eight of this code.

34 (f) The legislative rules filed in the state register on the  
35 thirteenth day of August, one thousand nine hundred  
36 eighty-two, and filed with amendments on the eleventh day  
37 of January, one thousand nine hundred eighty-three,  
38 relating to the state board of health (nursing home  
39 licensure) are authorized with the amendment of §5.15.02 of  
40 those rules as set forth below:

41 By striking the word "and" at the end of subdivision (f),  
42 by changing the period at the end of subdivision (g) to a  
43 semicolon, and by adding the following after subdivision  
44 (g): "(h) one (1) member who represents social work  
45 services."

46 These rules were proposed by the state board of health  
47 pursuant to section seven, article one, chapter sixteen and  
48 section three, article five-c, chapter sixteen of this code.

49 (g) The legislative rules filed in the state register on the  
50 nineteenth day of December, one thousand nine hundred  
51 eighty-three, relating to the state board of health (trauma  
52 center or facility designation) are authorized with the  
53 modifications set forth below:

54 In §§3.1, 3.2, 3.4, 3.6 and 3.10 delete the words "and as  
55 may be modified by the West Virginia Categorization  
56 Committee."

57 (h) The legislative rules filed in the state register on the  
58 seventh day of September, one thousand nine hundred  
59 eighty-three, relating to the state board of health (well  
60 water regulations) are authorized with the amendments set  
61 forth below:

62 §4.1. In the first sentence delete the word "obtaining"  
63 and insert in lieu thereof the words "applying for." In the  
64 second sentence after "4.3" add "and 4.5."

65 §4.2. At the end of the second sentence strike the period  
66 and add the words "unless emergency conditions prevail as  
67 noted under section 4.3."

68 With the balance of §4.2, and create a new §4.3 with the  
69 following changes: In the first sentence delete the word  
70 "deadline" and insert in lieu thereof the word  
71 "requirements." Add after the first sentence the sentence,  
72 "Emergency conditions and unavoidable circumstances are  
73 those conditions involving acts of God, water outages or  
74 disruption of water service, unsatisfactory water quality or  
75 quantity or public health threats." In the third sentence  
76 delete the word "exceed" and insert in lieu thereof the  
77 words "be made in excess of."

78 Renumber §4.3 as §4.4 and add the following two  
79 sentences at the end of the section: "Such standards shall  
80 constitute the minimum standards for the installation, the  
81 alteration or the deepening of water wells. Any plans  
82 approved by the director pursuant to these regulations  
83 shall be in substantial compliance with the heretofore  
84 mentioned standards."

85 Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7, §4.7 as  
86 §4.8 and §4.8 as §4.9.

87 §5.2. Delete the words "four (4)" and insert in lieu  
88 thereof the words "two (2)" and delete the words "active,  
89 continuous."

90 (i) The legislative rules filed in the state register on the  
91 nineteenth day of December, one thousand nine hundred  
92 eighty-three, relating to the state board of health  
93 (procedures for recovery of corneal tissue for transplant)  
94 are authorized.

**§64-2-16 (2e) (3). State board of health.**

1 The legislative rules filed in the state register on the  
2 nineteenth day of December, one thousand nine hundred  
3 eighty-three, relating to the state board of health (birthing  
4 center licensure) are authorized.

**§64-2-16 (20) (5). Air pollution control commission.**

1 (a) The legislative rules filed in the state register on the  
2 thirteenth day of August, one thousand nine hundred  
3 eighty-two, relating to the air pollution control commission  
4 (series VII), are authorized.

5 (b) The legislative rules filed in the state register on the  
6 thirteenth day of August, one thousand nine hundred  
7 eighty-two, relating to air pollution control commission  
8 (series XIX), are authorized.

9 (c) The legislative rules filed in the state register on the  
10 ninth day of January, one thousand nine hundred eighty-  
11 four, relating to the air pollution control commission  
12 (permits for construction and modification of stationary  
13 sources of air pollution for the prevention of significant  
14 deterioration) (series XIV) are authorized.

15 (d) The legislative rules filed in the state register on the  
16 sixteenth day of November, one thousand nine hundred  
17 eighty-three, relating to the air pollution control  
18 commission (emission standards for hazardous air  
19 pollutants) (series XV) are authorized.

20 (e) The legislative rules filed in the state register on the  
21 sixteenth day of November, one thousand nine hundred  
22 eighty-three, relating to the air pollution control  
23 commission (standards of performance for new stationary  
24 sources) (series XVI) are authorized.

25 (f) The legislative rules authorized by the Legislature in  
26 section twenty (five-e) (six) of this article (to prevent and  
27 control air pollution from hazardous waste treatment,  
28 storage or disposal facilities) (series XXV) were also  
29 proposed by the air pollution control commission pursuant  
30 to section five, article twenty, chapter sixteen of this code.

**§64-2-16 (29b) (8). Health care cost review authority.**

1 (a) The legislative rules filed in the state register on the  
2 twenty-first day of October, one thousand nine hundred  
3 eighty-three, relating to the health care cost review  
4 authority (limitation on hospital gross patient revenue) are  
5 authorized.

6 (b) The legislative rules filed in the state register on the  
7 nineteenth day of December, one thousand nine hundred  
8 eighty-three, relating to the health care cost review  
9 authority (freeze on hospital rates and granting temporary  
10 rate increases) are authorized.

**§64-2-17c (5a) (2). Commissioner of motor vehicles.**

1 The legislative rules filed in the state register on the ninth  
2 day of November, one thousand nine hundred eighty-three,  
3 relating to the commissioner of motor vehicles (driving  
4 under the influence, drivers' license revocation  
5 administrative hearings) are authorized.

**§64-2-17c (5a) (3). Department of motor vehicles.**

1 The legislative rules filed in the state register on the  
2 fifteenth day of December, one thousand nine hundred  
3 eighty-three, relating to the department of motor vehicles  
4 (safety and treatment program) are authorized.

**§64-2-17d (2a) (8). Commissioner of motor vehicles.**

1 The legislative rules filed in the state register on the  
2 sixteenth day of June, one thousand nine hundred eighty-  
3 three, relating to the commissioner of motor vehicles  
4 (compulsory insurance) are authorized.

**§64-2-19 (2) (5). Commissioner of agriculture.**

1 The legislative rules filed in the state register on the sixth  
2 day of April, one thousand nine hundred eighty-three,



3 relating to the commissioner of agriculture (schedule of  
4 charges for inspection services: fruit) are authorized.

**§64-2-19 (2c) (5). Commissioner of agriculture.**

1 The legislative rules filed in the state register on the third  
2 day of August, one thousand nine hundred eighty-three,  
3 relating to the commissioner of agriculture (licensing of  
4 auctioneers) are authorized.

**§64-2-19 (23) (6). West Virginia racing commission.**

1 (a) The legislative rules filed in the state register on the  
2 twenty-third day of April, one thousand nine hundred  
3 eighty-two, relating to the West Virginia racing commission  
4 (Rule 795), are authorized.

5 (b) The legislative rules filed in the state register on the  
6 twenty-third day of April, one thousand nine hundred  
7 eighty-two, relating to the West Virginia racing commission  
8 (Rule 107), are authorized.

9 (c) The legislative rules filed with the legislative rule-  
10 making review committee on the tenth day of January, one  
11 thousand nine hundred eighty-three, relating to the West  
12 Virginia racing commission (Rule 471), are authorized.

13 (d) The legislative rules filed in the state register on the  
14 tenth day of January, one thousand nine hundred eighty-  
15 three, relating to the West Virginia racing commission (Rule  
16 526), are authorized.

17 (e) The legislative rules filed in the state register on the  
18 twenty-third day of April, one thousand nine hundred  
19 eighty-two, relating to the West Virginia racing commission  
20 (Rule 819), are authorized.

21 (f) The legislative rules filed in the state register on the  
22 twentieth day of September, one thousand nine hundred  
23 eighty-three, relating to the West Virginia racing  
24 commission (Rule 107) greyhound racing, are authorized.

25 (g) The legislative rules filed in the state register on the  
26 twentieth day of September, one thousand nine hundred  
27 eighty-three, relating to the West Virginia racing  
28 commission (Rule 108) greyhound racing are authorized  
29 with the amendment set forth below:

30 Following the word "Association" insert a period and  
31 strike the remainder of the sentence.

32 (h) The legislative rules filed in the state register on the  
33 twentieth day of September, one thousand nine hundred  
34 eighty-three, relating to the West Virginia racing  
35 commission (Rule 108) thoroughbred racing are authorized  
36 with the amendment set forth below:

37 Following the word "Association" insert a period and  
38 strike the remainder of the sentence.

39 (i) The legislative rules filed in the state register on the  
40 twentieth day of September, one thousand nine hundred  
41 eighty-three, relating to the West Virginia racing  
42 commission (Rule 392) greyhound racing, are authorized.

43 (j) The legislative rules filed in the state register on the  
44 twentieth day of September, one thousand nine hundred  
45 eighty-three, relating to the West Virginia racing  
46 commission (Rule 455) greyhound racing are authorized.

47 (k) The legislative rules filed in the state register on the  
48 twentieth day of September, one thousand nine hundred  
49 eighty-three, relating to the West Virginia racing  
50 commission (Rule 609A) greyhound racing are authorized.

51 (l) The legislative rules filed in the state register on the  
52 twentieth day of September, one thousand nine hundred  
53 eighty-three, relating to the West Virginia racing  
54 commission (Rule 627) greyhound racing are authorized.

55 (m) The legislative rules filed in the state register on the  
56 twentieth day of September, one thousand nine hundred  
57 eighty-three, relating to the West Virginia racing  
58 commission (Rule 845) thoroughbred racing are authorized.

**§64-2-20 (5a) (3). Water resources board.**

1 (a) The legislative rules filed in the state register on the  
2 sixth day of January, one thousand nine hundred eighty-  
3 three, relating to the state water resources board  
4 (underground injection control program), are authorized.

5 (b) The legislative rules filed in the state register on the  
6 fifteenth day of November, one thousand nine hundred  
7 eighty-three, relating to the state water resources board  
8 (special regulations) are authorized.

9 (c) The legislative rules filed in the state register on the  
10 third day of August, one thousand nine hundred eighty-  
11 three, relating to the state water resources board  
12 (groundwater protection standards) are authorized.

13 (d) The legislative rules filed in the state register on the  
14 fifteenth day of November, one thousand nine hundred  
15 eighty-three, relating to the state water resources board  
16 (state national pollutant discharge elimination system  
17 (NPDES) program), are authorized.

18 (e) The Legislature hereby authorizes and directs the  
19 water resources board to promulgate rules relating to water  
20 quality standards in exact conformity with the rules  
21 relating to water quality standards tendered to the  
22 secretary of state on the seventh day of March, one thousand  
23 nine hundred eighty-four, by the executive secretary of the  
24 state water resources board, to be received and filed for  
25 inclusion in the state register by the secretary of state.

**§64-2-20 (5e) (6). Department of natural resources.**

1 (a) The legislative rules filed in the state register on the  
2 sixth day of January, one thousand nine hundred eighty-  
3 four, relating to the department of natural resources  
4 (hazardous waste management) are authorized.

5 (b) The legislative rules filed in the state register on the  
6 sixth day of January, one thousand nine hundred eighty-  
7 four, relating to the air pollution control commission (to  
8 prevent and control air pollution from hazardous waste  
9 treatment, storage or disposal facilities) (series XXV) are  
10 authorized with the amendments set forth below:

11 Page 3, §1.06, change the section title from  
12 "Enforcement" to "Procedure"; place an "(a)" in front of  
13 the existing paragraph and add the following:

14 "(b) Permit applications filed pursuant to this regulation  
15 shall be processed in accordance with the permitting  
16 procedures as set forth in Code §20-5E and this regulation.  
17 Permit procedures set forth in Code §16-20 and any other  
18 regulation of this commission are not applicable to any  
19 permit application filed pursuant to this regulation."

20 Page 91, §19.04, delete the second paragraph in its  
21 entirety.

22 Such rules shall also include a section which shall read as  
23 follows:

24 "The commission shall report to the legislative rule-  
25 making review committee as required by that committee,  
26 but in no event later than the first day of the regular session  
27 of the Legislature in the year one thousand nine hundred  
28 eighty-five. Such report shall include information  
29 regarding the commission's data gathering efforts, the  
30 development of compliance programs, the progress in  
31 implementation, and such other matters as the committee  
32 may require, pertaining to the regulations hereby  
33 authorized."

**§64-2-20 (5e) (7). Commissioner of highways.**

1 The legislative rules filed in the state register on the  
2 twenty-first day of October, one thousand nine hundred  
3 eighty-three, relating to the commissioner of highways  
4 (transportation of hazardous waste by highway  
5 transporters) are authorized with the amendments set forth  
6 below:

7 Pages 3 and 7 after "40CFR part 262" add the words "as  
8 amended through February 20, 1984,"

9 Page 7 after "49CFR parts 171-179" add the words "as  
10 amended through February 20, 1984,"and

11 Page 11 after "49CFR 171.16" add the words "as amended  
12 through February 20, 1984,".

**§64-2-20 (5f) (4). Department of natural resources.**

1 The legislative rules filed in the state register on the  
2 twentieth day of January, one thousand nine hundred  
3 eighty-four, relating to the department of natural resources  
4 (solid waste management) are authorized with the  
5 amendments set forth below:

6 Page 9, section 4.04, line five, add the following  
7 paragraph:

8 "Upon request of any applicant, the division shall meet  
9 with the applicant for pre-filing review of the application.  
10 The division, with the cooperation of the solid waste  
11 authority, shall assist the applicant in preparing a complete  
12 and proper application which would not be rejected as  
13 incomplete."

14 On page 15, section 6.03 (c) (1) in the first full sentence,  
15 after the word "cease", strike the remainder of the sentence  
16 and insert in lieu thereof the words "within fifteen (15) days  
17 of receipt of an order of suspension" and in the second  
18 sentence strike the word "recommence" and insert the  
19 words "continue beyond fifteen (15) days"; (c) (2) in the first  
20 full sentence, after the word "cease" by striking out the  
21 remainder of the sentence and insert in lieu thereof the  
22 words "immediately upon receipt of an order of  
23 revocation".

**§64-2-20 (6) (2). Department of natural resources.**

1 The legislative rules filed in the state register on the  
2 eighth day of December, one thousand nine hundred eighty-  
3 three, relating to the department of natural resources  
4 (surface mining) are authorized with the amendments set  
5 forth below:

6 Page 3-4, section 3E.01 by adding after the word  
7 "engineer" the words "or licensed land surveyor".

8 Page 3-5, section 3E.02, subsection (a), by adding after  
9 the word "mining" the words "or civil".

10 Page 3-5, section 3E.02, subsection (b) by adding after the  
11 first sentence the following sentence: "Those persons  
12 who have been approved to date need not make said  
13 demonstration."

**§64-2-20 (6) (38). Department of mines.**

1 The legislative rules filed in the state register on the  
2 seventeenth day of August, one thousand nine hundred  
3 eighty-three, relating to the department of mines  
4 (governing the safety of those employed in and around  
5 surface mines), are authorized.

**§64-2-21 (3) (18). Department of labor.**

1 The legislative rules filed in the state register on the

2 seventh day of December, one thousand nine hundred  
 3 eighty-three, relating to the department of labor  
 4 (hazardous chemical substances) are authorized.

**§64-2-22 (4) (13). Office of oil and gas, department of mines.**

1 The legislative rules filed in the state register on the  
 2 seventh day of December, one thousand nine hundred  
 3 eighty-three, relating to the office of oil and gas,  
 4 department of mines (oil and gas and other wells) are  
 5 authorized with the amendments set forth below:

6 Page viii, place an \* in front of §32.02.

7 Page ix, after §35.04 add the following:

8 “\*35.05 Extra powers of the administrator . . . . . 64”.

9 Page 1, §1.03 in the list of additional regulations, add  
 10 35.05; in the list of revised regulations, add 32.02, 32.03 and  
 11 33.00.

12 Page 52, §32.04 and §32.05 add at the end of (ii) the words  
 13 “and (iii) definition of proration unit”.

14 Page 53, §33 after the word “definitions” add the  
 15 following sentence: “The following definitions are  
 16 applicable to these regulations used for purposes of  
 17 implementing the Natural Gas Policy Act of 1978 and are  
 18 not intended to be used in any other context.”

19 Page 55, §33.02 (b) (16) after the word “formations” in the  
 20 third lines of (i) and (ii), add the words “for which a well has  
 21 been”.

22 Page 64, after §35.04 add the following section:  
 23 “35.05 Extra powers of the administrator.

24 The administrator may also certify or provide a waiver  
 25 for a well located within a proration unit as defined in 32.02  
 26 (b) (16) or any other well sought to be certified under these  
 27 regulations after notice and hearing.”

**§64-2-23 (4c) (3). Workers' compensation commissioner.**

1 The legislative rules filed in the state register on the  
 2 fourteenth day of November, one thousand nine hundred  
 3 eighty-three, relating to the workers' compensation

4 commissioner (employers' excess liability fund) are  
5 authorized.

**§64-2-27 (9) (1). State board of health.**

1 The legislative rules filed in the state register on the  
2 fourteenth day of November, one thousand nine hundred  
3 eighty-three, relating to the state board of health (licensure  
4 of behavioral health centers) are authorized with the  
5 amendments set forth below:

6 Page 45, §12.8.2. In the first sentence delete the words  
7 "without delay" and insert in lieu thereof the words "within  
8 twenty-four hours after receiving a report of a complaint."

**§64-2-27 (17) (3). State board of health.**

1 The legislative rules authorized by the Legislature in  
2 section twenty-seven (nine) (one) of this article were also  
3 proposed by the state board of health pursuant to section  
4 three, article seventeen, chapter twenty-seven of this code.

**§64-2-29 (3) (5). State fire commission.**

1 The legislative rules filed in the state register on the third  
2 day of January, one thousand nine hundred eighty-four,  
3 relating to the state fire commission (state fire code) are  
4 authorized with the amendments set forth below:

5 Page 1, §106, line 1, after the word "to" add the words  
6 "personal care homes caring for five or less patients or";  
7 and

8 Page 26, §11.06 (3) A. (3). Strike the period at the end  
9 of the sentence and add the words "except for existing  
10 sleeping rooms owned by the state and located in  
11 dormitories or state parks."

**§64-2-30 (3) (7). Board of medicine.**

1 The legislative rules filed in the state register on the  
2 twelfth day of May, one thousand nine hundred eighty-  
3 three, relating to the board of medicine (licensing,  
4 disciplinary and complaint procedures; podiatry; physician  
5 assistants) are authorized with the modifications set forth  
6 below:

7 §24.12.

8 (b) It shall be the responsibility of the supervising  
9 physician to obtain consent in writing from the patient  
10 before Type A physician assistants employed in a satellite  
11 clinic may render general medical or surgical services,  
12 except in emergencies.

13 §24.16.

14 (p) No physician assistant shall render nonemergency  
15 outpatient medical services until the patient has been  
16 informed that the individual providing care is a physician  
17 assistant.

**§64-2-30 (7) (4). Board of examiners for registered professional nurses.**

1 The legislative rules filed in the state register on the  
2 thirteenth day of September, one thousand nine hundred  
3 eighty-three, relating to the board of examiners for  
4 registered professional nurses (qualifications of graduates  
5 of foreign nursing schools for admission to the professional  
6 nurse licensing examination) are authorized.

**§64-2-30 (23) (5). Radiologic technology board of examiners.**

1 The legislative rules filed in the state register on the  
2 twenty-fourth day of January, one thousand nine hundred  
3 eighty-four, relating to the radiologic technology board of  
4 examiners are authorized.

**§64-2-31a (2) (4). Commissioner of banking.**

1 The legislative rules filed in the state register on the  
2 fifteenth day of December, one thousand nine hundred  
3 eighty-three, relating to the commissioner of banking  
4 (consumer credit sales), are authorized.

**§64-2-31a (4) (26). Commissioner of banking.**

1 The legislative rules filed in the state register on the  
2 nineteenth day of August, one thousand nine hundred  
3 eighty-three, relating to the commissioner of banking (legal  
4 lending limit) are authorized.

**§64-2-32 (4) (402). State auditor, securities commissioner.**

1 The legislative rules filed in the state register on the



2 twenty-first day of December, one thousand nine hundred  
3 eighty-three, relating to the state auditor, securities  
4 commissioner (broker-dealers, agents and investment  
5 advisors) are authorized with the amendments set forth  
6 below:

7 §14.06 Delete the words "as subsequently amended"  
8 and reinsert the words "as amended March 30, 1982".

9 §14.07 Place a period after "1976" and delete the words  
10 "as subsequently amended".

**§64-2-32 (4) (412). State auditor, securities commissioner.**

1 The legislative rules authorized by the Legislature in  
2 section thirty-two (four) (four hundred two) of this article  
3 were also proposed by the state auditor, securities  
4 commissioner pursuant to section four hundred twelve,  
5 article four, chapter thirty-two of this code.

**§64-2-33 (2) (10). Insurance commissioner.**

1 The legislative rules filed in the state register on the  
2 eighteenth day of October, one thousand nine hundred  
3 eighty-three, relating to the insurance commissioner  
4 (excess line brokers), are authorized.

**§64-2-33 (20) (15). Board of risk and insurance management.**

1 The legislative rules filed in the state register on the  
2 twenty-first day of October, one thousand nine hundred  
3 eighty-three, relating to the board of risk and insurance  
4 management (mine subsidence) are authorized.

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## CHAPTER 105

(H. B. 1172—By Delegate Gilliam and Delegate Schifano)

[Passed February 29, 1984; in effect January 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter forty-seven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia lending and credit rate board; authorizing the board to prescribe

semiannual, rather than quarterly, alternative maximum interest rates or finance charges on loans, credit sales, forbearances or other similar transactions; requiring semiannual reports; specifying dates for filing proposed changes with the banking commissioner; providing for public hearings; establishing effective dates for rate changes; providing for decisions as to whether a board meeting is necessary; and providing for emergency meetings.

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

That section one, article one, chapter forty-seven-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. LENDING AND CREDIT RATE BOARD.**

**§47A-1-1. Legislative findings; creation, membership, powers and duties of board.**

1 (a) The Legislature hereby finds and declares that:

2 (1) Changes in the permissible charges on loans, credit  
3 sales or transactions, forbearances or other similar transac-  
4 tions requires specialized knowledge of the needs of the  
5 citizens of West Virginia for credit for personal and com-  
6 mercial purposes and knowledge of the availability of such  
7 credit at reasonable rates to the citizens of this state while  
8 affording a competitive return to persons extending such  
9 credit;

10 (2) Maximum charges on loans, credit sales or transac-  
11 tions, forbearances or other similar transactions executed  
12 in this state should be prescribed from time to time to reflect  
13 changed economic conditions, current interest rates and fin-  
14 ance charges throughout the United States and the availability  
15 of credit within the state in order to promote the making  
16 of such loans in this state; and

17 (3) The prescribing of such maximum interest rates and  
18 finance charges can be accomplished most effectively and  
19 flexibly by a board comprised of the heads of designated  
20 government agencies, university schools of business and ad-  
21 ministration and members of the public.

22 (b) In view of the foregoing findings, it is the purpose  
23 of this section to establish the West Virginia lending and  
24 credit rate board and authorize said board to prescribe semi-  
25 annually the maximum interest rates and finance charges  
26 on loans, credit sales or transactions, forbearances or similar  
27 transactions made pursuant to this section subject to the pro-  
28 visions, conditions and limitations hereinafter set forth and  
29 to authorize lenders, sellers and other creditors to charge up  
30 to the maximum interest rates or finance charges so fixed.  
31 The rates prescribed by the board are alternative rates and  
32 any creditor may utilize either the rate or rates set by the  
33 board or any other rate or rates which the creditor is per-  
34 mitted to charge under any other provision of this code.

35 (c) The West Virginia lending and credit rate board  
36 shall be comprised of:

37 (1) The director of the governor's office of economic and  
38 community development;

39 (2) The West Virginia state treasurer;

40 (3) The West Virginia banking commissioner;

41 (4) The deans of the schools of business and administra-  
42 tion at Marshall University and West Virginia University;

43 (5) The director of the division of consumer protection  
44 of the attorney general's office;

45 (6) Three members of the public appointed by the gov-  
46 ernor with the advice and consent of the Senate. The  
47 members of the public shall be appointed for terms of six  
48 years each, and until their successors are appointed and  
49 qualified; except that of the members first appointed, one  
50 shall be appointed for a term of two years, one for a term  
51 of four years and one for a term of six years. A member who  
52 has served one full term of six years shall be ineligible for ap-  
53 pointment for the next succeeding term. Vacancies shall be  
54 filled by appointment of the Governor with the advice and con-  
55 sent of the Senate, or if any vacancy remains unfilled for three  
56 months, by a majority vote of the board. The West Virginia  
57 banking commissioner shall serve as chairperson of the board  
58 and the rate or rates set by the board shall be determined by

59 a majority vote of those members of the board in attendance  
60 at the respective board meeting.

61 (d) The West Virginia lending and credit rate board is here-  
62 by authorized and directed to meet after the thirty-first day of  
63 December, one thousand nine hundred eighty-three, on the first  
64 Tuesday of April and on the first Tuesday of October of each  
65 year or more or less frequently as required by the circumstances  
66 and to prescribe by order a maximum rate of interest and  
67 finance charge for the next succeeding six months, effective on  
68 the first day of June and on the first day of December, for any  
69 loans, credit sales or transactions, forbearances or similar trans-  
70 actions made pursuant to this section. In fixing said maximum  
71 rates of interest and finance charge, the board shall take into  
72 consideration prevailing economic conditions, including the  
73 monthly index of long-term United States government bond  
74 yields for the preceding calendar month, yields on conventional  
75 commercial short-term loans and notes throughout West Vir-  
76 ginia and throughout the United States and on corporate inter-  
77 est-bearing securities of high quality, the availability of credit at  
78 reasonable rates to the citizens of this state which afford a  
79 competitive return to persons extending such credit, and such  
80 other factors as the board may determine.

81 (e) Any petition proposing a change in the prescribed  
82 maximum rates of interest and finance charges must be filed  
83 in the office of the banking commissioner no later than the  
84 fifteenth day of February in order to be voted on at the  
85 board meeting on the first Tuesday of April and no later than  
86 the fifteenth day of August in order to be voted on at the  
87 board meeting on the first Tuesday of October. Whenever any  
88 change in the prescribed maximum rates of interest and  
89 finance charges is proposed the board shall schedule a hear-  
90 ing, at least fifteen days prior to the board meeting at which  
91 the proposed rates of interest and finance charge will be  
92 voted on by the members of the board, and shall give all  
93 interested parties the opportunity to testify and to submit  
94 information at such public hearing that is relevant. Notice  
95 of the scheduled public hearing shall be issued and dissemi-  
96 nated to the public at least twenty days prior to the scheduled  
97 date of the hearing.

98 (f) The board shall prescribe by order issued not later  
99 than the twentieth day of April and not later than the  
100 twentieth day of October, in accordance with the pro-  
101 visions of subsection (d) of this section the maximum  
102 rates of interest and finance charge for the next suc-  
103 ceeding six months for any loan, credit sale, forbear-  
104 ance or similar transaction made pursuant to this sec-  
105 tion and shall cause such maximum rate of interest and  
106 finance charge to be issued and disseminated to the public,  
107 such maximum rate of interest and finance charge to be ef-  
108 fective on the first day of June and the first day of December  
109 for the next succeeding six months.

110 (g) Notwithstanding the other provisions of this chap-  
111 ter, the West Virginia lending and credit rate board  
112 shall not be required to meet if no petition has been  
113 filed with the board requesting a hearing and interest  
114 rates and economic conditions have not changed suffici-  
115 ently to indicate that any change in the existing rate  
116 order would be required, and there are not at least two  
117 board members who concur that a meeting of the board  
118 is necessary. If the board does not meet, the maximum  
119 rates of interest and finance charges prescribed by the  
120 board in the existing rate order shall remain in full  
121 force and effect until the next time the board meets and  
122 prescribes different maximum rates of interest and finance  
123 charges.

124 (h) If circumstances and economic conditions require,  
125 the chairperson or any three board members, at any time,  
126 may call an emergency interim meeting of the West  
127 Virginia lending and credit rate board, at which time  
128 the chairperson shall give ten days' notice of the scheduled  
129 emergency meeting to the public. All interested parties  
130 shall have the opportunity to be heard and to submit  
131 information at such emergency meeting that is relevant.  
132 Any and all emergency rate board orders shall be ef-  
133 fective within thirty days from the date of such emergency  
134 meeting.

135 (i) Each member of the board, except those whose  
136 regular salary is paid by the state of West Virginia,

137 shall receive seventy-five dollars per diem while actual-  
138 ly engaged in the performance of the duties of the  
139 board. Each member shall be reimbursed for all rea-  
140 sonable and necessary expenses actually incurred during  
141 the performance of their duties, except that in the event  
142 the expenses are paid by a third party the members  
143 shall not be reimbursed by the state. The reimburse-  
144 ment shall be paid out of the revolving fund established  
145 by section two of this article upon a requisition upon  
146 the state auditor, properly certified by the banking com-  
147 missioner.

148 (j) In setting the maximum interest rates and finance  
149 charges, the board may set varying rates based on the type  
150 of credit transaction, the term of transaction, the type of  
151 debtor, the type of creditor and other factors relevant to  
152 determination of such rates. In addition, the board may set  
153 varying rates for ranges of principal balances within a single  
154 category of credit transaction.

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## CHAPTER 106

(Com. Sub. for S. B. 65—By Senator Tucker and Senator Tomblin)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen, relating generally to credit line deeds of trust which secure a present indebtedness and future advances; mandatory provisions of such deeds of trust; priority of such deeds of trust over all other liens created or arising after recordation of the deed of trust; certain exceptions to the priority of such deeds of trust; and the release of such deeds of trust.

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

That article one, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended by adding thereto a new section, designated section fourteen, to read as follows:

**ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.**

**§38-1-14. Future advances secured by credit line deed of trust; form; priority over other liens; release.**

1 (a) Whenever a deed of trust otherwise complying  
2 with the provisions of this article is clearly entitled at  
3 the beginning thereof either in capital letters or in  
4 language underscored, the words "A CREDIT LINE  
5 DEED OF TRUST," the deed of trust shall be, from the  
6 time it is duly recorded as required by law, security for  
7 all indebtedness secured thereby at the time of recording  
8 and for all future advances secured thereby in an aggregate  
9 principal amount outstanding at any time not to  
10 exceed the maximum amount stated in the deed of trust,  
11 without regard to whether the future advances are contracted  
12 for at the time of recordation of the deed of trust  
13 or whether the secured party under the deed of trust  
14 readvances principal sums repaid. The deed of trust shall  
15 also be security for interest on the principal sums and for  
16 taxes, insurance premiums and other obligations, including  
17 interest thereon, undertaken by the secured party in  
18 the deed of trust or in the related loan agreement, note or  
19 other evidences of indebtedness secured thereby. The  
20 interest, taxes, insurance premiums and other obligations  
21 when added to the total principal amount of the loans  
22 outstanding at any time may increase the amount secured  
23 by the deed of trust above the stated maximum amount.

24 (b) A credit line deed of trust, in addition to other  
25 provisions of this code, shall conform with the following:  
26

27 (1) The deed of trust shall contain specific provisions  
28 permitting or requiring future advances;

29 (2) At no time may the unpaid principal balance of  
30 indebtedness secured by the deed of trust exceed the  
31 maximum amount stated therein, except as specifically  
32 provided for in subsection (a) of this section; and

33 (3) The original deed of trust must be executed and  
34 recorded after the effective date of this section.

35 (c) Except as otherwise provided herein, the deed of  
36 trust to the extent of the principal amount of the loan  
37 secured thereby, interest thereon, taxes, insurance pre-  
38 miums and other obligations, including interest thereon,  
39 secured thereby, has priority over all other deeds of trust,  
40 liens and encumbrances of every nature, however created  
41 or arising, to the same extent and for the same amount  
42 as if all the amounts were advanced immediately after  
43 the date and time the deed of trust is recorded.

44 (d) After the recording of the credit line deed of trust,  
45 any mechanic's lien, abstract of judgment, notice of lis  
46 pendens, deed of trust or other lien or encumbrance  
47 affecting the property encumbered by the deed of trust is  
48 duly recorded and otherwise perfected as required by  
49 law, any optional or nonobligatory advances secured by  
50 the deed of trust which are made by the secured party  
51 under the deed of trust after receipt by the secured  
52 party of written notice of the other lien at the address  
53 provided for this purpose in the deed of trust, does not  
54 have priority over the lien of the mechanic's lien, judg-  
55 ment lien, notice of lis pendens, deed of trust or other  
56 lien or encumbrance. However, any obligatory advances  
57 which the secured party contracted to make by written  
58 agreement entered into with the obligor whose indebt-  
59 edness is secured by the deed of trust, prior to receipt  
60 of this written notice, and any taxes, insurance prem-  
61 iums and obligations which the secured party has agreed  
62 to pay, or which under the deed of trust or otherwise  
63 the secured party has the right to pay in connection  
64 with such deed of trust, shall continue to have the  
65 priority created under subsection (a) of this section  
66 over a mechanic's lien, judgment lien, notice of lis  
67 pendens, deed of trust or other lien or encumbrance. For  
68 the purposes of this section, an "obligatory advance"  
69 means any advance of principal which the secured party  
70 under the deed of trust is legally obligated to make in  
71 the absence of the occurrence of a specific event under the  
72 deed of trust or related loan agreement or note, by a



73 specified date or time or upon application therefor by  
74 the grantor under the deed of trust or by another ob-  
75 ligor whose indebtedness is secured by the deed of trust.

76 (e) Notwithstanding any other provision of this code,  
77 the secured party under a credit line deed of trust subject  
78 to this section shall be obligated to release the deed of  
79 trust at such time as all indebtedness secured thereby has  
80 been paid in full and the secured party has been duly  
81 released from any further obligation to make future ad-  
82 vances under any note or agreement secured by the deed  
83 of trust. This release shall become effective upon the  
84 recording of the release and the secured party shall be  
85 released and discharged from any further obligation.

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## CHAPTER 107

(H. B. 1967—By Delegate Givens and Delegate Kelly)

[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the number of magistrates to be elected in each county; two magistrates to be elected in Brooke county.

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

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

### ARTICLE 1. COURTS AND OFFICERS.

#### §50-1-2. Number of magistrates.

1 In each county which has less than thirty thousand in popu-  
2 lation there shall be elected two magistrates; except that in  
3 the county of Putnam there shall be elected three magistrates.  
4 In each county which has thirty thousand or more in popu-  
5 lation but less than sixty thousand in population there shall

6 be elected three magistrates; except that in the county of  
7 McDowell there shall be elected four magistrates, and in the  
8 county of Brooke there shall be elected two magistrates. In  
9 each county which has sixty thousand or more in population  
10 but less than one hundred five thousand in population there  
11 shall be elected four magistrates; except that in the county  
12 of Raleigh there shall be elected five magistrates. In each  
13 county which has one hundred five thousand or more in  
14 population but less than two hundred thousand in population  
15 there shall be elected seven magistrates. In each county which  
16 has two hundred thousand or more in population there shall  
17 be elected ten magistrates. For the purpose of this article,  
18 the population of each county shall be considered to be the  
19 population as determined by the last preceding census taken  
20 under the authority of the United States government. No  
21 change in the number of magistrates caused by the publica-  
22 tion of more recent such census figures shall be effective  
23 until the next regular election for such office occurring after  
24 the year of such publication.

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## CHAPTER 108

(Com. Sub. for H. B. 1465—By Delegate Chambers)

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[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

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AN ACT to amend and reenact sections three, eight, nine and nine-a, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the judicial system and magistrate courts; providing for altering the population criteria and break-point and reducing the number of classes for determination of maximum allowable salaries for magistrate court clerks and deputy clerks and magistrate assistants; providing for increasing the salaries of magistrates and increasing the allowable maximum salaries of magistrate court clerks, deputy clerks and magistrate assistants; increasing maximum number of deputy clerks; and specifying effective date.

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

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

**ARTICLE 1. COURTS AND OFFICERS.**

§50-1-3. Salary of magistrates.

§50-1-8. Magistrate court clerks; salary; duties; duties of circuit clerk.

§50-1-9. Magistrate assistants; salary; duties.

§50-1-9a. Magistrate court deputy clerks; salary; duties.

**§50-1-3. Salary of magistrates.**

1 The salary of each magistrate shall be paid by the state.  
2 Beginning on the first day of July, one thousand nine hundred  
3 eighty-four, magistrates who serve less than ten thousand in  
4 population shall be paid annual salaries of seventeen thousand  
5 two hundred fifty dollars; magistrates who serve ten thousand  
6 or more in population but less than fifteen thousand in popula-  
7 tion shall be paid annual salaries of twenty thousand six hun-  
8 dred twenty-five dollars: *Provided*, That magistrates in the  
9 county of Putnam shall be paid annual salaries of twenty thou-  
10 sand six hundred twenty-five dollars. Magistrates who serve  
11 fifteen thousand or more in population shall be paid annual  
12 salaries of twenty-five thousand one hundred twenty-five dol-  
13 lars: *Provided, however*, That magistrates in the counties of  
14 Boone, Preston and Jefferson shall be paid annual salaries of  
15 twenty-five thousand one hundred twenty-five dollars. For the  
16 purpose of determining the population served by each magis-  
17 trate, the number of magistrates authorized for each county  
18 shall be divided into the population of each county. Magis-  
19 trates shall be paid once a month.

**§50-1-8. Magistrate court clerks; salary; duties; duties of circuit clerk.**

1 In each county having three or more magistrates the judge  
2 of the circuit court or the chief judge thereof, if there is more  
3 than one judge of the circuit court, shall appoint a magistrate  
4 court clerk. In all other counties such judge may appoint a mag-  
5 istrate court clerk or may by rule require the duties of the mag-  
6 istrate court clerk to be performed by the clerk of the circuit

7 court, in which event such circuit court clerk shall be entitled to  
8 additional compensation in the amount of two thousand five  
9 hundred dollars per year. In any county a magistrate court clerk  
10 may be appointed prior to the first day of January, one thou-  
11 sand nine hundred seventy-seven. The magistrate court clerk  
12 shall serve at the will and pleasure of such circuit judge.

13 Magistrate court clerks shall be paid a monthly salary by  
14 the state. Beginning on the first day of July, one thousand nine  
15 hundred eighty-four, magistrate court clerks serving magistrates  
16 who serve less than ten thousand in population shall be paid  
17 up to nine hundred eighty-one dollars per month; magistrate  
18 court clerks serving magistrates who serve ten thousand or  
19 more in population but less than fifteen thousand in popula-  
20 tion shall be paid up to one thousand two hundred forty-one  
21 dollars per month: *Provided*, That the magistrate court clerk  
22 in the county of Putnam shall be paid up to one thousand two  
23 hundred forty-one dollars per month; and magistrate court  
24 clerks serving magistrates who serve fifteen thousand or more  
25 in population shall be paid up to one thousand five hundred  
26 sixteen dollars per month: *Provided, however*, That the mag-  
27 istrate court clerks in the counties of Boone, Preston and Jeff-  
28 erson shall be paid up to one thousand five hundred sixteen dol-  
29 lars per month. For the purpose of determining the population  
30 served by each magistrate, the number of magistrates autho-  
31 rized for each county shall be divided into the population of  
32 each county. The salary of the magistrate court clerk shall be  
33 established by the judge of the circuit court, or the chief  
34 judge thereof if there is more than one judge of the circuit  
35 court, within the limits set forth in this section.

36 In addition to other duties as may be imposed by the pro-  
37 visions of this chapter or by the rules of the supreme court  
38 of appeals or the judge of the circuit court, or the chief judge  
39 thereof if there is more than one judge of the circuit court, it  
40 shall be the duty of the magistrate court clerk to establish and  
41 maintain appropriate dockets and records in a centralized sys-  
42 tem for the magistrate court, to assist in the preparation of  
43 such reports as may be required of the court and to carry out  
44 on behalf of the magistrates, or chief magistrate if a chief  
45 magistrate is appointed, the administrative duties of the court.

46 The magistrate court clerk or, if there is no magistrate  
47 court clerk in the county, the clerk of the circuit court shall  
48 have the authority to issue all manner of civil process and to  
49 require the enforcement of subpoenas and subpoenas duces  
50 tecum in magistrate court.

**§50-1-9. Magistrate assistants; salary; duties.**

1 In each county there shall be one magistrate assistant for  
2 each magistrate. Each magistrate assistant shall be appointed  
3 by the magistrate under whose authority and supervision and  
4 at whose will and pleasure he shall serve. Such assistant shall  
5 not be a member of the immediate family of any magistrate  
6 and shall not have been convicted of a felony or any misde-  
7 meanor involving moral turpitude and shall reside in the  
8 county where appointed. For the purpose of this section, im-  
9 mediate family shall mean the relationships of mother, father,  
10 sister, brother, child or spouse.

11 A magistrate assistant shall have such duties, clerical or  
12 otherwise, as may be assigned by the magistrate and as may  
13 be prescribed by the rules of the supreme court of appeals or  
14 the judge of the circuit court, or the chief judge thereof if  
15 there is more than one judge of the circuit court. In addition  
16 to these duties, magistrate assistants shall perform and be  
17 accountable to the magistrate court clerks with respect to the  
18 following duties:

19 (1) The preparation of summons in civil actions;

20 (2) The assignment of civil actions to the various magis-  
21 trates;

22 (3) The collection of all costs, fees, fines, forfeitures and  
23 penalties which may be payable to the court;

24 (4) The submission of such moneys, along with an account-  
25 ing thereof to appropriate authorities as provided by law;

26 (5) The daily disposition of closed files which are to be  
27 located in the magistrate clerk's office;

28 (6) All duties related to the gathering of information and  
29 documents necessary for the preparation of administrative re-  
30 ports and documents required by the rules of the supreme court

31 of appeals or the judge of the circuit court, or the chief judge  
32 thereof if there is more than one judge of the circuit court;

33 (7) All duties relating to the notification, certification and  
34 payment of jurors serving pursuant to the terms of this  
35 chapter;

36 (8) All other duties or responsibilities whereby the magis-  
37 trate assistant shall be accountable to the magistrate court  
38 clerk as the magistrate shall determine.

39 Magistrate assistants shall be paid a monthly salary by the  
40 state. Beginning on the first day of July, one thousand nine  
41 hundred eighty-four, magistrate assistants serving magistrates  
42 who serve less than ten thousand in population shall be paid  
43 up to seven hundred eighty-eight dollars per month; magistrate  
44 assistants serving magistrates who serve ten thousand or more  
45 in population but less than fifteen thousand in population shall  
46 be paid up to nine hundred seventeen dollars per month:  
47 *Provided*, That magistrate assistants in the county of Putnam  
48 shall be paid up to nine hundred seventeen dollars per month;  
49 and magistrate assistants serving magistrates who serve fifteen  
50 thousand or more in population shall be paid up to one thou-  
51 sand forty-five dollars per month: *Provided, however*, That  
52 magistrate assistants in the counties of Boone, Preston and  
53 Jefferson shall be paid up to one thousand forty-five dollars per  
54 month. For the purpose of determining the population served  
55 by each magistrate, the number of magistrates authorized for  
56 each county shall be divided into the population of each coun-  
57 ty. The salary of the magistrate assistant shall be established by  
58 the magistrate within the limits set forth in this section.

**§50-1-9a. Magistrate court deputy clerks; salary; duties.**

1 Whenever required by work load and upon the recommenda-  
2 tion of the judge of the circuit court, or the chief judge thereof  
3 if there is more than one judge of the circuit court, the su-  
4 preme court of appeals may by rule provide for the appointment  
5 of magistrate court deputy clerks, not to exceed forty-six in  
6 number. Such magistrate court deputy clerks shall be appointed  
7 by the judge of the circuit court, or the chief judge thereof if  
8 there is more than one judge of the circuit court, with such  
9 appointee to serve at his will and pleasure under the immediate

10 supervision of the magistrate court clerk. Such magistrate court  
11 deputy clerk shall have such duties, clerical or otherwise, as  
12 may be assigned by the magistrate court clerk and as may be  
13 prescribed by the rules of the supreme court of appeals or the  
14 judge of the circuit court, or the chief judge thereof if there is  
15 more than one judge of the circuit court. Such magistrate  
16 court deputy clerks shall also have authority to exercise the  
17 power and perform the duties of the magistrate court clerk as  
18 may be delegated or assigned by such magistrate court clerk.

19 Such magistrate court deputy clerk shall not be a member of  
20 the immediate family of any magistrate, magistrate court clerk,  
21 magistrate assistant or circuit court judge within the same coun-  
22 ty, shall not have been convicted of a felony or any misde-  
23 meanor involving moral turpitude and shall reside in the coun-  
24 ty where appointed. For the purpose of this section, immediate  
25 family shall mean the relationships of mother, father, sister,  
26 brother, child or spouse.

27 Magistrate court deputy clerks shall be paid a monthly sal-  
28 ary by the state. Such salary shall be paid on the same basis  
29 and in the same applicable amounts as for magistrate assistants  
30 in each county as provided in section nine of this article.

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## CHAPTER 109

(Com. Sub. for H. B. 1004—By Delegate Steptoe and Delegate Doyle)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to magistrate courts; the trials, hearings and appeals in and from such courts; prohibiting appeals in criminal cases where a plea of guilty has been entered with representation by counsel; and exceptions.

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

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

**ARTICLE 5. TRIALS, HEARINGS AND APPEALS.****§50-5-13. Appeals in criminal cases.**

1 Any person convicted of an offense in a magistrate court  
2 may appeal such conviction to circuit court by requesting  
3 such appeal within twenty days of the sentencing for such  
4 conviction. The magistrate may require the posting of bond  
5 with good security conditioned upon the appearance of the  
6 defendant as required in circuit court, but such bond may  
7 not exceed the maximum amount of any fine which could be  
8 imposed for the offense. Such bond may be upon the  
9 defendant's own recognizance. An appeal may be granted by a  
10 judge of the circuit court of the county within ninety days  
11 from the date of sentencing. The filing or granting of an  
12 appeal shall automatically stay the sentence of the magistrate.  
13 Trial in circuit court shall be de novo. Notwithstanding any  
14 other provisions of this code to the contrary, there shall be  
15 no appeal from a plea of guilty where the defendant was  
16 represented by counsel at the time the plea was entered:  
17 *Provided*, That the defendant shall have an appeal from a plea  
18 of guilty where an extraordinary remedy would lie or where  
19 the magistrate court lacked jurisdiction.

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**CHAPTER 110**

(S. B. 657—By Mr. McGraw, Mr. President, and Senator Chace)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying that responsibility for decisions relating to admission, discharge, and program planning in facilities for the mentally retarded lies with the superintendent or the superintendent's designee, rather than with the clinical director or chief medical officer.

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

That section seven, article one, chapter twenty-seven of the



code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. WORDS AND PHRASES DEFINED.**

**§27-1-7. Superintendent and clinical director.**

1 (a) The superintendent of a state hospital shall be the  
2 chief executive officer and shall have the authority to  
3 manage and administer the financial, business and per-  
4 sonnel affairs of such state hospital. All other persons  
5 employed at a state hospital shall be under the jurisdic-  
6 tion and authority of the superintendent of such state  
7 hospital.

8 (b) The clinical director of a state hospital shall have  
9 the responsibility for decisions involving clinical and  
10 medical treatment of patients and shall be a physician.  
11 The clinical director of a state hospital shall be a person  
12 other than the superintendent of such state hospital.

13 (c) In any facility designated by the director of health  
14 as a facility for the mentally retarded in which programs  
15 and services are designed primarily to provide education,  
16 training and habilitation rather than medical or psychi-  
17 atric treatment, the duties and responsibilities, other than  
18 those directly related to medical treatment services, as-  
19 signed to the clinical director by this section or elsewhere  
20 in this chapter, shall be assigned to and become the re-  
21 sponsibility of the superintendent of such facility, who  
22 need not be a physician, or of a person with expertise in  
23 the field of mental retardation, who need not be a phy-  
24 sician, designated by the superintendent.

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## CHAPTER 111

(H. B. 1722—By Delegate Crookshanks)

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[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new section, designated section one-a, relating to authorizing the department of health to lease Greenbrier school for retarded children; and certain restrictions and conditions upon such lease.

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

That article two, chapter twenty-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 one-a, to read as follows:

**ARTICLE 2. MENTAL HEALTH FACILITIES.**

**§27-2-1a. Department of health authorized to lease Greenbrier school for retarded children.**

1 On and after the effective date of this section the depart-  
2 ment of health is authorized to enter into a lease agreement  
3 with Carnegie Hall, Inc., a nonprofit, nonstock corporation,  
4 chartered as a corporation under the laws of this state on the  
5 first day of February, one thousand nine hundred eighty-  
6 three. Under the terms of such agreement, the department  
7 of health may lease to Carnegie Hall, Inc., all or a portion of  
8 that certain structure commonly known as Carnegie Hall on  
9 the grounds of the Greenbrier school for retarded children,  
10 located in Lewisburg. Such agreement shall require that Car-  
11 negie Hall, Inc., restore, maintain and perpetuate the use of  
12 Carnegie Hall for the use, benefit, education, entertainment  
13 and enjoyment of the citizens of the Greenbrier Valley, the  
14 residents of the Greenbrier school for retarded children and  
15 this state. The lease of the premises may be for a nominal fee  
16 and for such terms as the department deems appropriate and  
17 for so long as Carnegie Hall, Inc., uses the premises for the  
18 purposes set forth in its original charter described above, and  
19 as a nonprofit, nonstock corporation.

## CHAPTER 112

(H. B. 1224—By Delegate Starcher and Delegate I. Damron)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article six-a of said chapter, all relating to increasing to one hundred ten dollars from one hundred dollars the per diem for members of the board of coal mine health and safety; increasing to one hundred ten dollars from seventy-five dollars the per diem for members of the board of miner training, education and certification; and providing for expense reimbursement to members of both boards for meals, lodging and mileage at the rates established by the commissioner of the department of finance and administration for in-state travel of public employees.

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

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

### Article

**2A. Board of Coal Mine Health and Safety.**

**6A. Board of Miner Training, Education and Certification Credited; Membership, Method of Appointment, Terms.**

### **ARTICLE 2A. BOARD OF COAL MINE HEALTH AND SAFETY.**

#### **§22-2A-7. Compensation and expenses of board members.**

1 Each member of the board not otherwise employed by the  
2 state shall receive one hundred ten dollars per diem while  
3 actually engaged in the performance of the duties of the  
4 board. Each member shall be reimbursed for all reasonable  
5 and necessary expenses actually incurred during the per-  
6 formance of their duties, except that in the event the expenses  
7 are paid by a third party, the members shall not be reim-  
8 bursed by the state. Each member shall receive meals, lodging

9 and mileage expense reimbursements at the rates established  
10 by rule and regulation of the commissioner of the depart-  
11 ment of finance and administration for in-state travel of  
12 public employees. The reimbursement shall be paid out of  
13 the state treasury upon a requisition upon the state auditor,  
14 properly certified by the director of the department of mines.  
15 No employer shall prohibit a member of the board from  
16 exercising leave of absence from his place of employment in  
17 order to attend a meeting of the board or a meeting of a  
18 subcommittee of the board, or to prepare for a meeting of  
19 the board, any contract of employment to the contrary not-  
20 withstanding.

**ARTICLE 6A. BOARD OF MINER TRAINING, EDUCATION AND  
CERTIFICATION.**

**§22-6A-4. Board of miner training, education and certification  
created; membership, method of appointment, terms.**

1 (a) There is hereby created a board of miner training,  
2 education and certification, which shall consist of seven  
3 members, who shall be appointed in the following manner:

4 (1) One member shall be appointed to represent the  
5 viewpoint of surface mine operators in this state. When  
6 such member is to be appointed, the governor shall request  
7 from the major association representing surface coal opera-  
8 tors in this state a list of three nominees to the board.  
9 The governor shall select from said nominees one person  
10 to serve on the board. For purposes of this subsection, the  
11 major association representing the surface coal operators  
12 in this state shall be deemed to be that association, if  
13 any, which represents surface mine operators accounting  
14 for over one half of the coal produced in surface mines  
15 in this state in the year prior to that year in which the ap-  
16 pointment is made.

17 (2) Two members shall be appointed to represent the  
18 interests of the underground operators of this state. When  
19 said members are to be appointed, the governor shall request  
20 from the major association representing the underground coal  
21 operators in this state a list of six nominees to the board.  
22 The governor shall select from said nominees two persons to

23 serve on the board. For purposes of this subsection, the  
24 major association representing the underground operators in  
25 this state shall be deemed to be that association, if any,  
26 which represents underground operators accounting for over  
27 one half of the coal produced in underground mines in this  
28 state in the year prior to that year in which the appointments  
29 are made.

30 (3) Three members shall be appointed who can reasonably  
31 be expected to represent the interests of the working miners  
32 in this state. If the major employee organization repre-  
33 senting coal miners in this state is divided into administra-  
34 tive districts, the employee organization of each district shall,  
35 upon request by the governor, submit a list of three nominees  
36 for membership on the board. If such major employee or-  
37 ganization is not so divided into administrative districts,  
38 such employee organization shall, upon request by the gover-  
39 nor, submit a list of twelve nominees for membership on the  
40 board. The governor shall make such appointments from the  
41 persons so nominated: *Provided*, That in the event nomina-  
42 tions are made by administrative districts, not more than one  
43 member shall be appointed from the nominees of any one  
44 district unless there are less than three such districts in this  
45 state.

46 (4) The seventh member of the board, who shall serve as  
47 chairman, shall be a person selected and agreed upon by the  
48 six persons appointed by the governor.

49 (5) All appointments made by the governor under this sec-  
50 tion shall be with the advice and consent of the Senate: *Pro-*  
51 *vided*, That persons so appointed while the Senate of this  
52 state is not in session shall be permitted to serve up to  
53 one year in an acting capacity, or until the next session of  
54 the Legislature, whichever is less.

55 (b) The board hereby established shall be appointed by  
56 the governor within three months of the effective date of  
57 this act. As soon as the members of the board are appointed,  
58 the director of the department of mines shall call an organiza-  
59 tional meeting of the board. At said meeting all of the  
60 board members then appointed shall select a seventh member

61 of the board to serve as chairman and draw lots to deter-  
62 mine the length of the term they and the chairman shall  
63 serve. Three members shall serve for three years; two mem-  
64 bers shall serve for two years; and two members shall  
65 serve for one year. Thereafter, members shall serve for a  
66 term of three years. As so organized, the board shall meet  
67 at the call of the chairman, at the call of the director, or  
68 upon the request of any two members of the board: *Pro-*  
69 *vided*, That no meeting of the board for any purpose shall  
70 be conducted unless the board members are notified at least  
71 five days in advance of a proposed meeting. In cases of an  
72 emergency, members may be notified of a board meeting by  
73 the most appropriate means of communication available.

74 (c) Whenever a vacancy on the board occurs, appointments  
75 shall be made in the manner prescribed in this section:  
76 *Provided*, That in the case of an appointment to fill a vacancy  
77 nominations shall be submitted to the governor within thirty  
78 days after the vacancy occurs. The vacancy shall be filled by  
79 the governor within thirty days of his receipt of the list of  
80 nominations.

81 (d) Each member of the board shall receive one hundred  
82 ten dollars per diem while actually engaged in the per-  
83 formance of the work of the board. Each member shall be  
84 reimbursed for all reasonable and necessary expenses actually  
85 incurred during the performance of their duties. Each member  
86 shall receive meals, lodging and mileage expense reimburse-  
87 ments at the rates established by rule and regulation of the  
88 commissioner of the department of finance and administration  
89 for in-state travel of public employees, which shall be paid out  
90 of the state treasury upon a requisition upon the state auditor,  
91 properly certified by such members of the board.

92 (e) A quorum of the board shall be four members. The  
93 board may act officially by a majority of those members who  
94 are present.

95 (f) The chairman of the board shall be a nonvoting mem-  
96 ber: *Provided*, That in cases of a tie, the chairman shall  
97 cast the deciding vote on the issue or issues under considera-  
98 tion.

99 (g) The director of the department of mines shall serve  
100 as the secretary to the board and shall be present or send  
101 an authorized representative to all meetings of the board.

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## CHAPTER 113

(Com. Sub. for S. B. 698—By Senator Tonkovich)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and twenty, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section fourteen, article five, chapter twenty-one of said code; and to further amend article five of said chapter by adding thereto a new section, designated section fourteen-a, all relating to prohibition of surface mining without a permit; permit requirements; providing that the director of the department of natural resources ascertain compliance with wage bond requirements prior to issuing any permit; public notice and hearings; requiring that the commissioner of labor, upon receipt of applicant's name and address from the director, notify the director as to applicant's compliance with wage bond requirements; wage payment and collection; requiring posting of wage bond prior to engaging in any construction work or the severance, production or transportation of minerals; insufficiency of bond; and manner of distribution.

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

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

**Chapter****20. Natural resources.****21. Labor.****CHAPTER 20. NATURAL RESOURCES.****ARTICLE 6. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.**

§20-6-9. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

§20-6-20. Public notice; written objections; public hearings; informal conferences.

**§20-6-9. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.**

1 No person may engage in surface-mining operations  
2 unless such person has first obtained a permit from the  
3 director in accordance with the following:

4 (a) Within two months after the secretary of the interior  
5 approves a permanent state program for West Virginia, all  
6 surface-mining operators shall file an application for a  
7 permit or modification of a valid existing permit or  
8 underground opening approval relating to those lands to be  
9 mined eight months after that approval.

10 (b) No later than eight months after the secretary's  
11 approval of a permanent state program for West Virginia,  
12 no person may engage in or carry out, on lands within this  
13 state, any surface-mining operations unless such person has  
14 first obtained a permit from the director: *Provided*, That  
15 those persons conducting such operations under a permit or  
16 underground opening approval issued in accordance with  
17 section 502(c) of Public Law 95-87, and in compliance  
18 therewith, may conduct such operations beyond such  
19 period if an application for a permit or modification of a  
20 valid existing permit or underground opening approval was  
21 filed within two months after the secretary's approval, and  
22 the administrative decision pertaining to the granting or  
23 denying of such permit has not been made by the director.



24 (c) All permits issued pursuant to the requirements of  
25 this article shall be issued for a term not to exceed five  
26 years: *Provided*, That if the applicant demonstrates that a  
27 specified longer term is reasonably needed to allow the  
28 applicant to obtain necessary financing for equipment and  
29 the opening of the operation, and if the application is full  
30 and complete for such specified longer term, the director  
31 may extend a permit for such longer term: *Provided*,  
32 *however*, That subject to the prior approval of the director,  
33 a successor in interest to a permittee who applies for a new  
34 permit within thirty days of succeeding to such interest, and  
35 who is able to obtain the bond coverage of the original  
36 permittee, may continue surface-mining and reclamation  
37 operations according to the approved mining and  
38 reclamation plan of the original permittee until such  
39 successor's application is granted or denied.

40 (d) Proof of insurance shall be required on an annual  
41 basis.

42 (e) A permit shall terminate if the permittee has not  
43 commenced the surface-mining operations covered by such  
44 permit within three years of the date the permit was issued:  
45 *Provided*, That the director may grant reasonable  
46 extensions of time upon a showing that such extensions are  
47 necessary by reason of litigation precluding such  
48 commencement, or threatening, substantial economic loss  
49 to the permittee, or by reason of conditions beyond the  
50 control and without the fault or negligence of the permittee:  
51 *Provided, however*, That with respect to coal to be mined  
52 for use in a synthetic fuel facility or specific major electric  
53 generating facility, the permittee shall be deemed to have  
54 commenced surface-mining operations at such time as the  
55 construction of the synthetic fuel or generating facility is  
56 initiated.

57 (f) Each application for a new surface-mining permit  
58 filed pursuant to this article shall be accompanied by a fee  
59 of five hundred dollars. All permit fees provided for in this  
60 section or elsewhere in this article shall be collected by the  
61 director and deposited with the treasurer of the state of  
62 West Virginia to the credit of the operating permit fees fund

63 and shall be used, upon requisition of the director, for the  
64 administration of this article.

65 (g) Prior to the issuance of any permit, the director shall  
66 ascertain from the commissioner of labor compliance with  
67 section fourteen, article five, chapter twenty-one of this  
68 code. Upon issuance of the permit, the director shall  
69 forward a copy to the commissioner of labor, who shall  
70 assure continued compliance under such permit.

**§20-6-20. Public notice; written objections; public hearings;  
informal conferences.**

1 At the time of submission of an application for a  
2 surface-mining permit or a significant revision of an  
3 existing permit pursuant to the provisions of this article,  
4 the applicant shall submit to the department a copy of the  
5 required advertisement. At the time of submission, the  
6 applicant shall place the advertisement in a local  
7 newspaper of general circulation in the county of the  
8 proposed surface-mining operation at least once a week for  
9 four consecutive weeks. The director shall notify various  
10 appropriate federal and state agencies as well as local  
11 governmental bodies, planning agencies and sewage and  
12 water treatment authorities or water companies in the  
13 locality in which the proposed surface-mining operation  
14 will take place, notifying them of the operator's intention to  
15 mine on a particularly described tract of land and  
16 indicating the application number and where a copy of the  
17 proposed mining and reclamation plan may be inspected.  
18 These local bodies, agencies, authorities or companies may  
19 submit written comments within a reasonable period  
20 established by the director on the mining application with  
21 respect to the effect of the proposed operation on the  
22 environment which is within their area of responsibility.  
23 Such comments shall be immediately transmitted by the  
24 director to the applicant and to the appropriate office of the  
25 department. The director shall provide the name and  
26 address of each applicant to the commissioner of labor who  
27 shall within fifteen days from receipt notify the director as  
28 to the applicant's compliance, if necessary, with section  
29 fourteen, article five, chapter twenty-one of this code.

**CHAPTER 21. LABOR.****ARTICLE 5. WAGE PAYMENT AND COLLECTION.**

§21-5-14. Employer's bond for wages and benefits.

§21-5-14a. Insufficiency of bond; manner of distribution.

**§21-5-14. Employer's bond for wages and benefits.**

1 (a) With the exception of those who have been doing  
2 business in this state for at least five consecutive years,  
3 every person, firm or corporation engaged in or about to  
4 engage in construction work, or the severance, production  
5 or transportation (excluding railroads and water  
6 transporters) of minerals, shall, prior to engaging in any  
7 construction work, or the severance, production or  
8 transportation of minerals, furnish a bond on a form  
9 prescribed by the commissioner, payable to the state of  
10 West Virginia with the condition that the person, firm or  
11 corporation pay the wages and fringe benefits of his or its  
12 employees when due. The amount of the bond shall be equal  
13 to the total of the employer's gross payroll for four weeks at  
14 full capacity or production, plus fifteen percent of the said  
15 total of the employer's gross payroll for four weeks at full  
16 capacity or production. The amount of the bond shall  
17 increase or decrease as the employer's payroll increases or  
18 decreases: *Provided*, That the amount of the bond shall not  
19 be decreased, except with the commissioner's approval and  
20 determination that there are not outstanding claims against  
21 the bond.

22 (b) The commissioner may waive the posting of any  
23 bond required by subsection (a) of this section upon his  
24 determination that an employer is of sufficient financial  
25 responsibility to pay wages and fringe benefits. The  
26 commissioner shall promulgate rules and regulations  
27 according to the provisions of chapter twenty-nine-a of this  
28 code which prescribe standards for the granting of such  
29 waivers.

30 (c) The bond may include, with the approval of the  
31 commissioner, surety bonding, collateral bonding  
32 (including cash and securities), establishment of an escrow  
33 account or a combination of these methods. If collateral

34 bonding is used, the employer may deposit cash, or  
35 collateral securities or certificates as follows: Bonds of the  
36 United States or its possessions, or of the federal land bank,  
37 or of the homeowner's loan corporation; full faith and  
38 credit general obligation bonds of the state of West Virginia  
39 or other states, and of any county, district or municipality of  
40 the state of West Virginia or other states; or certificates of  
41 deposit in a bank in this state, which certificates shall be in  
42 favor of the state. The cash deposit or market value of such  
43 securities or certificates shall be equal to or greater than the  
44 sum of the bond. The commissioner shall, upon receipt of  
45 any such deposit of cash, securities or certificates, promptly  
46 place the same with the state treasurer whose duty it shall  
47 be to receive and hold the same in the name of the state in  
48 trust for the purpose for which such deposit is made. The  
49 employer making the deposit shall be entitled from time to  
50 time to receive from the state treasurer, upon the written  
51 approval of the commissioner, the whole or any portion of  
52 any cash, securities or certificates so deposited, upon  
53 depositing with him in lieu thereof, cash or other securities  
54 or certificates of the classes herein specified having value  
55 equal to or greater than the sum of the bond.

56 (d) Notwithstanding any other provision in this article,  
57 any employee, whose wages and fringe benefits are secured  
58 by the bond, as specified in subsection (c) of this section, has  
59 a direct cause of action against the bond for wages and  
60 fringe benefits that are due and unpaid.

61 (e) Any employee having wages and fringe benefits  
62 unpaid, may inform the commissioner of the claim for  
63 unpaid wages and fringe benefits and request certification  
64 thereof. If the commissioner, upon notice to the employer  
65 and investigation finds that such wages and fringe benefits  
66 or a portion thereof are unpaid, he shall make demand of  
67 such employer for the payment of such wages and fringe  
68 benefits. If payment for such wages and fringe benefits is  
69 not forthcoming within the time specified by the  
70 commissioner, not to exceed thirty days, the commissioner  
71 shall certify such claim or portion thereof, and forward the  
72 certification to the bonding company or the state treasurer,  
73 who shall provide payment to the affected employee within

74 fourteen days of receipt of such certification. The bonding  
75 company, or any person, firm or corporation posting a  
76 bond, thereafter shall have the right to proceed against a  
77 defaulting employer for that part of the claim of the  
78 employee paid.

79 (f) With the exception of those exempt under subsection  
80 (a) of this section, any employer who is engaged in  
81 construction work or the severance, production or  
82 transportation (excluding railroad and water transporters)  
83 of minerals shall post one of the following in a place  
84 accessible to his or its employees: A copy of the bond  
85 provided under subsection (a) of this section, or notification  
86 that the posting of a bond has been waived by the  
87 commissioner.

88 (g) The bond may be terminated, with the approval of  
89 the commissioner, after an employer submits a statement,  
90 under oath or affirmation lawfully administered, to the  
91 commissioner that the following has occurred: The  
92 employer has ceased doing business and all wages and  
93 fringe benefits have been paid, or the employer has been  
94 doing business in this state for at least five consecutive  
95 years and has paid all wages and fringe benefits. The bond  
96 may also be terminated upon a determination by the  
97 commissioner that an employer is of sufficient financial  
98 responsibility to pay wages and fringe benefits.

**§21-5-14a. Insufficiency of bond; manner of distribution.**

1 In the event that the claim of any employee or group of  
2 employees having wages and fringe benefits unpaid is in an  
3 amount in excess of the bond required in section fourteen of  
4 this article, the manner of distribution and order of priority  
5 of claims shall be as follows: Unpaid wages; unpaid fringe  
6 benefits; damages or expenses incurred or arising out of  
7 actual injury: *Provided*, That nothing contained in this  
8 section shall be construed so as to limit any other cause of  
9 action against any person, firm or corporation.

## CHAPTER 114

(S. B. 745—Originating in the Senate Committee on Natural Resources)

Passed March 10, 1984; in effect from passage. Approved by the Governor.

AN ACT to amend and reenact section forty-three, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to consolidation of permitting, enforcement and rule-making authority for surface mining operations.

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

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

**ARTICLE 6. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.**

**§20-6-43. Consolidation of permitting, enforcement and rule-making authority for surface mining operations; National Pollutant Discharge Elimination System; effective date of section.**

1 (a) Notwithstanding any provisions of this chapter to  
2 the contrary, all powers, duties and responsibilities of the  
3 chief of the division of water resources under article five-a  
4 of this chapter with respect to all coal mines, preparation  
5 plants and all refuse and waste therefrom subject to said  
6 article five-a, are hereby transferred to the director. The  
7 director shall have sole authority to issue, amend, transfer,  
8 renew or revoke all permits required under article five-a of  
9 this chapter with respect to all coal mines, preparation  
10 plants and all refuse and waste therefrom subject to said  
11 article five-a. The procedures for issuance, amendment,  
12 transferral, renewal and revocation of such permits shall be  
13 governed by regulations promulgated pursuant to  
14 subsection (b). The director shall consolidate the various  
15 permit programs under articles five-a and six of this  
16 chapter applicable to all coal mines, preparation plants and  
17 all refuse and waste therefrom. All provisions of article  
18 five-a heretofore applicable to coal mines, preparation

19 plants and all refuse and waste therefrom shall be  
20 continued under this section.

21 (b) Notwithstanding any provisions of this chapter to  
22 the contrary, the reclamation commission shall have sole  
23 authority to promulgate rules and regulations necessary or  
24 proper to implement the provisions of article five-a of this  
25 chapter with respect to all coal mines, preparation plants  
26 and all refuse and waste therefrom, except that the water  
27 resources board shall have the sole authority pursuant  
28 to section three-a, article five-a of this chapter to  
29 promulgate rules and regulations setting standards of  
30 water quality applicable to the waters of the state. To the  
31 extent feasible, the reclamation commission shall  
32 promulgate rules and regulations consolidating the various  
33 regulatory programs under this chapter applicable to all  
34 coal mines, preparation plants and all refuse and waste  
35 therefrom. The promulgation of such rules and regulations  
36 shall be governed by the provisions of this article.

37 (c) Notwithstanding any provisions of this chapter to  
38 the contrary, the director shall have the sole authority to  
39 enforce and shall enforce the rules and regulations of the  
40 reclamation commission and the rules and regulations of  
41 the water resources board setting water quality standards  
42 for the waters of the state as they apply to all coal mines,  
43 preparation plants and all refuse and waste therefrom.  
44 Rules and regulations adopted by the reclamation  
45 commission, pursuant to the requirements of article five-a  
46 of this chapter, shall be enforceable by the director under  
47 the provisions of sections seventeen and nineteen, article  
48 five-a of this chapter, as though the regulations were  
49 promulgated by the water resources board: *Provided*, That  
50 the director's authority to enforce such rules and  
51 regulations under article five-a shall not preclude the  
52 director or any person from invoking the remedies  
53 otherwise provided by article six of this chapter and shall  
54 not preclude the director from enforcing the provisions of  
55 this article.

56 (d) Notwithstanding any provisions of this chapter to  
57 the contrary, any permit of the director issued pursuant to  
58 subsection (a) of this section, or any order issued under

59 article five-a of this chapter, or for the purpose of  
60 implementing the "National Pollutant Discharge  
61 Elimination System" established under the federal Clean  
62 Water Act shall be appealable only to the state water  
63 resources board and such appeal shall be governed by the  
64 provisions of section fifteen, article five-a of this chapter.

65 (e) This section shall become effective upon a  
66 proclamation by the governor stating that final approval of  
67 the partial transfer of the National Pollutant Discharge  
68 Elimination System established under the federal Clean  
69 Water Act contemplated by this section has been given by  
70 the Administrator of the United States Environmental  
71 Protection Agency.

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## CHAPTER 115

(Com. Sub. for H. B. 1791—By Delegate Burke and Delegate Yanni)

[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter seventeen-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 amend and reenact section one, article five of said chapter, all relating to motor vehicles; authorizing commissioner to enter into reciprocal proportional registration agreements; issuance of registration plates or markers; authorizing the promulgation of procedural rules; providing certain exceptions to motor vehicle registration for nonresident owners; increasing the fee for nonresident vehicle permits; requiring motor vehicle liability insurance for nonresident commercial vehicles operating in this state; and granting certain exceptions for nonresident vehicles engaged in emergency restoration of public utility services.

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

That article two, chapter seventeen-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 that section one, article five of said chapter be amended and reenacted, all to read as follows:

**Article**

- 2. Department of Motor Vehicles.**
- 5. Permits to Nonresident Owners.**

**ARTICLE 2. DEPARTMENT OF MOTOR VEHICLES:**

**§17A-2-10a. Same—Authorizing the entry of this state into reciprocal proportional registration agreements; issuance of registration plates or markers; promulgation of rules.**

1 (a) The commissioner of motor vehicles is hereby autho-  
2 rized and empowered to enter into reciprocal agreements  
3 on behalf of this state with any jurisdiction which permits  
4 or requires the licensing of motor vehicles in interstate or  
5 combined interstate and intrastate commerce and the payment  
6 of registration, licensing or other fixed fees on an apportion-  
7 ment basis commensurate with and determined by the miles  
8 traveled on public roads and highways in that jurisdic-  
9 tion, as compared with the miles traveled on public roads  
10 and highways in other jurisdictions or on any other equit-  
11 able basis of apportionment, and if that jurisdiction exempts  
12 motor vehicles registered in other jurisdictions under that  
13 apportionment basis from the requirements of full payment  
14 of its own registration, license or other fixed fees, the  
15 commissioner, by agreement may adopt the exemption as to  
16 those motor vehicles, whether owned by residents or non-  
17 residents of this state and regardless of where the vehicles  
18 are registered.

19 (b) The agreements under such terms, conditions or  
20 restrictions as the commissioner deems proper may provide  
21 that owners of motor vehicles operated in interstate or  
22 combined interstate and intrastate commerce in this state  
23 shall be permitted to pay registration, license or other fixed  
24 fees on an apportionment basis, commensurate with and  
25 determined by the miles traveled on public roads and high-  
26 ways in this state as compared with the miles traveled  
27 on public roads and highways in other jurisdictions or any

28 other equitable basis of apportionment. Such agreements  
29 shall not authorize or be construed as authorizing any motor  
30 vehicle so registered to be operated without complying with  
31 the provisions of chapter eleven and chapter twenty-four-a  
32 of this code.

33 (c) Pursuant to the provisions of this section, the com-  
34 missioner is expressly authorized and empowered to enter into  
35 and become a member of the international registration plan  
36 or such other designation that may from time to time be  
37 given to such reciprocal plan.

38 (d) The commissioner shall prescribe the substance, form,  
39 color and context of any registration plate or marker issued  
40 under the provisions of this section, each of which shall be  
41 visually distinguishable from other registration plates or mark-  
42 ers produced by the department of motor vehicles.

43 (e) The commissioner is authorized to promulgate pro-  
44 cedural rules as may be necessary to carry out the provisions  
45 of any agreements entered into pursuant to this section.

#### ARTICLE 5. PERMITS TO NONRESIDENT OWNERS.

##### **§17A-5-1. Exemptions from registration of nonresident owners; special permit and certificate in lieu of registration for nonresidents maintaining temporary and recur- rent or seasonal residence in state.**

1 (a) A nonresident owner, except as otherwise provided in  
2 this section, owning any vehicle registered in a foreign state  
3 or country of a Class A type otherwise subject to registration  
4 hereunder may operate or permit the operation of such  
5 vehicle within this state for a period of thirty days without  
6 registering such vehicle in, or paying any fees to, this state  
7 subject to the condition that such vehicle at all times when  
8 operated in this state is duly registered in and displays upon  
9 it a valid registration card and registration plate or plates  
10 issued for such vehicle in the place of residence of such  
11 owner and that such vehicle is not operated for commercial  
12 purposes.

13 (b) Every nonresident, including any foreign corporation,

14 carrying on business within this state and owning and regularly  
15 operating in such business any motor vehicle, trailer or  
16 semitrailer within this state, shall be required to register  
17 each such vehicle and pay the same fee therefor as is required  
18 with reference to like vehicles owned by residents of this  
19 state, except as otherwise provided by reciprocal agreements  
20 with other states accomplished pursuant to sections ten and  
21 ten-a, article two of this chapter.

22 (c) Any nonresident who accepts or engages in temporary  
23 and recurrent or seasonal employment, business, profession  
24 or occupation in this state and maintains temporary and  
25 recurrent or seasonal residence in this state in connection  
26 with such employment, business, profession or occupation,  
27 and any nonresident, including any corporation carrying on  
28 business of a temporary and recurrent or seasonal nature in  
29 this state and owning and temporarily and recurrently or  
30 seasonally operating in such business any motor vehicle,  
31 trailer or semitrailer within this state, may operate or per-  
32 mit the operation of such vehicle within this state without  
33 causing said vehicle to be registered as otherwise required  
34 by article three of this chapter: *Provided*, That such non-  
35 resident, in lieu of registration of such vehicle, shall make  
36 application to the department and receive a special permit  
37 for such vehicle which shall be evidenced by a metal identifi-  
38 cation plate and certificate in writing, which special permit  
39 plate and certificate shall together identify the vehicle for  
40 which such special permit and plate shall issue and such  
41 certificate shall bear the name and address of the owner  
42 of such vehicle. Such special permit shall be issued with-  
43 out previous certification of title to such vehicle as other-  
44 wise required by article three of this chapter or the pro-  
45 visions of subsection (b) of this section.

46 Every owner of a vehicle for which such special permit is de-  
47 sired shall make a verified application to the department for  
48 such special permit upon the appropriate form or forms  
49 furnished by the department and shall bear the signature  
50 of the owner written with pen and ink and shall contain  
51 the character of information called for by section three,  
52 article three of this chapter, a description of the employ-

53 ment, residence, business and location of such business set  
54 forth in such manner as to show the temporary and recur-  
55 rent or seasonal nature of such residence, employment, busi-  
56 ness, profession or occupation, and that such vehicle is duly  
57 registered in the state of residence of such owner. There shall  
58 be an application for each vehicle for which a special permit  
59 is desired.

60 Any special permit or plate issued by the department  
61 under this section shall be effective and valid for a period  
62 of sixty consecutive days from and including the date of  
63 issuance and, upon similar application by the owner, the  
64 commissioner may renew any such special permit for im-  
65 mediately ensuing similar period or periods of sixty days in  
66 any fiscal year. The department shall charge a fee of fifty  
67 dollars for each special permit issued under this section.  
68 A special permit shall be issued for one vehicle only and no  
69 combination of two or more vehicles shall be operated under  
70 fewer special permits than the number of vehicles in such  
71 combination. A special permit shall not be issued for any  
72 vehicle which is not duly registered in the state of residence  
73 of the owner thereof. The registration plate issued for such  
74 vehicle by the state of residence of the owner shall not be  
75 displayed on such vehicle while being operated over any  
76 highway during any period for which a special permit shall  
77 have been issued for such vehicle under this section, but  
78 there shall be carried in such vehicle the certificate of registra-  
79 tion issued for such vehicle by the state of residence of such  
80 owner. Any owner of any vehicle making application to oper-  
81 ate such vehicle upon the highways of this state pursuant to the  
82 provisions of this article shall also be required to comply  
83 with the provisions of chapter seventeen-d of this code prior  
84 to commencing such operation.

85 The commissioner shall prescribe the substance, form, color  
86 and context of the certificate or special permit and the  
87 special permit plate, each of which shall be visually distin-  
88 guishable from the certificates of registration and registration  
89 plates issued under article three of this chapter.

90 It is a misdemeanor for any person to drive or move or

91 knowingly to permit to be moved or driven upon any highway  
92 any vehicle for which a special permit shall have been  
93 issued under this section unless such vehicle shall bear the  
94 special plate called for by the certificate evidencing such  
95 special permit.

96 When the employment, business, profession, occupation or  
97 residence of the owner of a vehicle for which such special  
98 permit shall have been issued shall cease to be temporary  
99 and recurrent or seasonal, any special permit issued for  
100 such vehicle pursuant to this section shall immediately ter-  
101minate and become void and such vehicle shall thereupon  
102 become subject to registration under article three of this  
103 chapter or the provisions of subsection (b) of this section.

104 Any special permit issued pursuant to this section shall be  
105 valid and effective on and after the first day of a month;  
106 that is, such special permit issued between the first and  
107 fifteenth days of a month shall be effective during sixty  
108 consecutive days from and including the first day of the  
109 month in which the permit shall issue; and a special permit  
110 issued after the fifteenth day of any month shall be effective  
111 during sixty consecutive days commencing with and including  
112 the first day of the month next following the month in which  
113 such special permit shall be issued.

114 (d) Any other provision of this section notwithstanding,  
115 any nonresident referred to in subsection (c) of this section  
116 who is engaged by a public utility, as the latter is defined in  
117 chapter twenty-four of this code, for the exclusive purpose of  
118 restoring the service of said utility as a result of an emergency  
119 in which such service is affected shall be permitted to operate  
120 such motor vehicle, trailer or semitrailer within this state  
121 without causing said motor vehicle, trailer or semitrailer to  
122 be registered as otherwise provided by this section and article  
123 three of this chapter for the period actually necessary for such  
124 restoration but not to exceed a period of ten consecutive days:  
125 *Provided*, That said motor vehicle, trailer or semitrailer shall  
126 be registered in another state upon entry into this state. The  
127 provisions of this subsection shall not affect the requirements  
128 of reciprocal agreements with other states accomplished pur-  
129suant to sections ten and ten-a, article two of this chapter.

## CHAPTER 116

(Com. Sub. for H. B. 1400—By Mr. Speaker, Mr. See, by request of the Executive)

[Passed March 8, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections four, five and six, article two-a, chapter seventeen-d of said code; and to amend and reenact section five, article three, chapter seventeen-d of said code, all relating to motor vehicle liability insurance or other security; making application for registration; requiring proof of insurance or security; requiring insurer to notify commissioner only if insurance is not in effect; enhancing provisions of company issued certificates of insurance; certificate of insurance must be presented at time of motor vehicle inspection; providing criminal penalties for false statements of insurance; providing procedures for suspension of motor vehicle registration; requiring department of motor vehicles to prepare annual motor vehicle insurance report to the Legislature; and directing law-enforcement officers to require proof of insurance when vehicles are involved in traffic offenses.

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

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

### **Chapter**

**17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.**

**17D. Motor Vehicle Safety Responsibility Law.**

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,  
REGISTRATION, CERTIFICATE OF TITLE, AND  
ANTITHEFT PROVISIONS.**

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.**

**§17A-3-3. Application for registration; statement of insurance or other proof of security to accompany application; criminal penalties; fees; special revolving fund.**

1 Every owner of a vehicle subject to registration here-  
2 under shall make application to the department for the regis-  
3 tration thereof upon the appropriate form or forms furnished  
4 by the department and every such application shall bear the  
5 signature of the owner or his authorized agent, written with  
6 pen and ink, and said application shall contain:

7 (1) The name, bona fide residence and mailing address of  
8 the owner, the county in which he resides, or business address  
9 of the owner if a firm, association or corporation.

10 (2) A description of the vehicle including, insofar as the  
11 hereinafter specified data may exist with respect to a given  
12 vehicle, the make, model, type of body, the manufacturer's  
13 serial or identification number or other number as determined  
14 by the commissioner.

15 (3) In the event a motor vehicle is designed, constructed,  
16 converted or rebuilt for the transportation of property, the  
17 application shall include a statement of its declared gross  
18 weight if such motor vehicle is to be used alone, or if such  
19 motor vehicle is to be used in combination with other vehicles,  
20 the application for registration of such motor vehicle shall  
21 include a statement of the combined declared gross weight of  
22 such motor vehicle and the vehicles to be drawn by such motor  
23 vehicle; declared gross weight being the weight declared by the  
24 owner to be the actual combined weight of the vehicle or  
25 combination of vehicles and load when carrying the maximum  
26 load which the owner intends to place thereon; and the appli-  
27 cation for registration of each such vehicle shall also include  
28 a statement of the distance between the first and last axles of  
29 that vehicle or combination of vehicles. The declared gross  
30 weight stated in the application shall not exceed the permis-  
31 sible gross weight for the axle spacing listed therein as deter-  
32 mined by the table of permissible gross weights contained in  
33 chapter seventeen-c of this code; and any vehicle registered for

34 a declared gross weight as stated in the application shall be  
35 subject to the single-axle load limit set forth in chapter seven-  
36 teen-c of this code.

37 (4) Each such applicant shall state whether such vehicle  
38 is or is not to be used in the public transportation of passen-  
39 gers or property, or both, for compensation, and if so used,  
40 or to be used, the applicants shall so certify, and shall, as a  
41 condition precedent to the registration of such vehicle, obtain a  
42 certificate of convenience, or permit from the public service  
43 commission.

44 (5) A statement under penalty of false swearing that lia-  
45 bility insurance is in effect within limits which shall be no  
46 less than the requirement of section two, article four, chapter  
47 seventeen-d of this code, which statement shall contain the  
48 name of the applicant's insurer, the name of the agent or  
49 agency which issued the policy and the effective date of the  
50 policy, and such other information as may be required by the  
51 commissioner of motor vehicles, or that the applicant has  
52 qualified as a selfinsurer meeting the requirements of section  
53 two, article six, chapter seventeen-d of the code and that as a  
54 selfinsurer he has complied with the minimum security re-  
55 quirements as established in section two, article four of said  
56 chapter seventeen-d, or that such applicant has submitted  
57 bond or other security approved by the commissioner of motor  
58 vehicles which shall provide the equivalent of the policy of  
59 insurance herein specified, or that the applicant has submitted  
60 the required cash or other securities with the state treasurer  
61 as set forth in the provisions of section sixteen, article four  
62 of said chapter seventeen-d of this code.

63 In the case of a periodic use or seasonal vehicle, as defined  
64 in section three, article two-a, chapter seventeen-d, the owner  
65 may provide, in lieu of other statements required by this sec-  
66 tion, a statement, under penalty of false swearing, that  
67 liability insurance is in effect during the portion of the year  
68 the vehicle is in actual use, within limits which shall be no  
69 less than the requirements of section two, article four, chapter  
70 seventeen-d of this code, and other information relating to the  
71 seasonal use, on a form designed and provided by the depart-  
72 ment.



73 The department shall periodically select for verification, on a  
74 random sample basis, not fewer than one percent of the state-  
75 ments of liability insurance required by this section. When a  
76 statement is selected for verification, the department shall for-  
77 ward the information provided on the statement to the listed in-  
78 surer. The insurer shall notify the department, by such form as  
79 the commissioner may require, within thirty calendar days if  
80 the liability insurance is not in effect, as required by this section.

81 The department may select for verification any statement of  
82 liability insurance submitted by a person who has previously  
83 been convicted of violating the provisions of section three,  
84 article two-a, chapter seventeen-d of this code, or whose state-  
85 ments of liability insurance have previously been found to be  
86 incorrect. The department may also determine the correct-  
87 ness of information relating to proof of other security satisfying  
88 the requirements of this section.

89 If the department determines through the verification pro-  
90 cess that there is no liability insurance in effect, then within  
91 fifteen days of receipt of notice from the insurer, the commis-  
92 sioner of motor vehicles shall inform the registrant that the  
93 department of motor vehicles has received the notice from  
94 the insurer. This information shall be sent by regular mail and  
95 shall request verification of insurance or a statement from the  
96 registrant, under penalty of false swearing, that cancellation  
97 will not result in the operation of an uninsured vehicle upon  
98 the highways of this state, and this verification shall be re-  
99 turned to the commissioner within twenty days of the date of  
100 mailing. Following the twenty-day period, if the registrant has  
101 not responded, then the commissioner shall send a notice of  
102 pending suspension to the registrant by certified mail. The  
103 notice of pending suspension shall grant the registrant an  
104 additional twenty days from the date of the mailing to provide  
105 verification of insurance or other requested information to  
106 the commissioner. Following this twenty-day period, an order  
107 of suspension shall be directed to the superintendent by the  
108 commissioner as provided in section seven, article nine, chapter  
109 seventeen-a of this code: *Provided*, That whenever the com-  
110 missioner determines that the vehicle was actually insured  
111 despite the receipt of a notice from the insurer, and the

112 registrant, under penalty of false swearing produces a state-  
113 ment that cancellation will not result in the operation of an  
114 uninsured vehicle upon the highways of this state, or produces  
115 verification of insurance, suspension shall be withdrawn and  
116 any fees collected by the state shall be returned. The registrant  
117 shall be given notice and afforded an opportunity for hearing  
118 and judicial review thereof in accordance with the provisions of  
119 subsection (c), section seven, article two, chapter seventeen-  
120 d of this code.

121 If any person making an application required under the pro-  
122 vision of this section, therein knowingly provides false infor-  
123 mation, false proof of security or a false statement of insur-  
124 ance, or if any person, including an applicant's insurance agent,  
125 knowingly counsels, advises, aids or abets another in provid-  
126 ing false information, false proof of security, or a false state-  
127 ment of insurance in such application, he is guilty of a misde-  
128 meanor, and, upon conviction thereof, shall be fined not more  
129 than five hundred dollars, or be imprisoned in the county jail  
130 for a period not to exceed fifteen days, or both fined and im-  
131 prisoned, and in addition to such fine or imprisonment shall  
132 have his operator's or chauffeur's license and vehicle registra-  
133 tion suspended for a period of six months.

134 (6) Such further information as may reasonably be required  
135 by the department to enable it to determine whether the ve-  
136 hicle is lawfully entitled to registration.

137 (7) Each such application for registration shall be accom-  
138 panied by the fees hereafter provided, and an additional fee  
139 of one dollar for each motor vehicle for which the applicant  
140 seeks registration, such fee to be deposited in a special re-  
141 volving fund for the operation by the department of its func-  
142 tions established by the provisions of article two-a, chapter  
143 seventeen-d of this code: *Provided*, That July one, one thou-  
144 sand nine hundred eighty-five, the additional fee will reduce  
145 to and remain at fifty cents.

## CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

### Article

- 2A. Security upon Motor Vehicles.
3. Security Following Accident.

**ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.**

§17D-2A-4. Certificate of insurance.

§17D-2A-5. Cancellation of insurance policy; suspension of registration; minimum policy term.

§17D-2A-6. Investigation by duly authorized law-enforcement officer to include inquiry regarding required security; notice to department of motor vehicles.

**§17D-2A-4. Certificate of insurance.**

1 (a) All insurance carriers transacting insurance in this state  
2 shall supply a certificate of insurance to the insured or to any  
3 person subject to the registration provisions of article three,  
4 chapter seventeen-a of this code, certifying that there is in  
5 effect a motor vehicle liability policy upon such motor vehicle  
6 in accordance with the provisions of article three, chapter  
7 seventeen-a of this code. The certificate shall give its effective  
8 date and the effective date of the policy and, unless the policy  
9 is issued to a person who is not the owner of a motor vehicle,  
10 must designate by explicit description, in such detail as the  
11 commissioner of the department of motor vehicles shall by  
12 rule require, all motor vehicles covered and all replacement  
13 vehicles of similar classification: *Provided*, That, on and after  
14 the first day of July, one thousand nine hundred eighty-four,  
15 insurance companies shall supply a certificate of insurance in  
16 duplicate for each policy term and for each vehicle included  
17 in a policy, except for those listed in a fleet policy. Each such  
18 certificate of insurance shall list the name of the policyholder  
19 and the name of the vehicle owner if different from the policy-  
20 holder.

21 The certificate must specify for each vehicle listed therein,  
22 that there is a minimum liability insurance coverage not less  
23 than the requirements of section two, article four, and section  
24 five, article three, chapter seventeen-d of this code.

25 (b) The certificate provided pursuant to the provisions of  
26 this section or other proof of insurance shall be carried by the  
27 insured in the appropriate vehicle for use as proof of security,  
28 and must be presented at the time of vehicle inspection as re-  
29 quired by article sixteen, chapter seventeen-c of this code:  
30 *Provided*, That an insured shall not be guilty of a violation of

31 this subsection (b) if he furnishes proof that such insurance  
32 was in effect within seven days of being cited for not carrying  
33 such certificate or other proof in such vehicle. As used in this  
34 section, proof of insurance means a certificate of insurance, an  
35 insurance policy, a mechanically reproduced copy of an in-  
36 surance policy or a certificate of self-insurance.

**§17D-2A-5. Cancellation of insurance policy; suspension of registration; minimum policy term.**

1 (a) An insurance company shall provide the department  
2 of motor vehicles with a cancellation notice within ten days  
3 of the effective date of cancellation whenever the company  
4 issues or causes to be issued a cancellation under the pro-  
5 visions of subsections (b) through (e), section one, article  
6 six-a, chapter thirty-three of this code. The department shall  
7 then suspend the operator's or chauffeur's license of the own-  
8 er of such vehicle for a period of ninety days and shall  
9 suspend the motor vehicle registration until proof of insur-  
10 ance is presented to the department.

11 (b) On or before the fifteenth day of January, one thou-  
12 sand nine hundred eighty-five, the commissioner of motor  
13 vehicles shall report to the Legislature upon proceedings  
14 pursuant to this section. The report shall include the total  
15 number of statements selected for verification as required  
16 by section three, article three, chapter seventeen-a, the total  
17 number of notices received from insurers, the total number  
18 of notices of pending suspensions issued, and the total num-  
19 ber of cases in which cancellation was found to have resulted  
20 in a lapse of coverage upon a vehicle operated upon the high-  
21 ways of this state during the prior year.

22 (c) No policy of motor vehicle liability insurance issued  
23 or delivered for issuance in this state shall be contracted for  
24 a period of less than ninety days: *Provided*, That the insur-  
25 ance commissioner may establish exceptions thereto by rules  
26 and regulations to chapter twenty-nine-a.

**§17D-2A-6. Investigation by duly authorized law-enforcement officer to include inquiry regarding required security; notice to department of motor vehicles.**

1 At the time of investigation of a motor vehicle offense or

2 accident in this state by the department of public safety or  
3 other law-enforcement agency or when a vehicle is stopped  
4 by a law-enforcement officer for reasonable cause, the officer  
5 of such agency making such investigation shall inquire of the  
6 operators of any motor vehicle involved as to the existence  
7 upon such vehicle or vehicles of the proof of insurance or  
8 other security required by the provisions of this code and  
9 upon a finding by such law-enforcement agency, officer or  
10 agent thereof that the security required by the provisions  
11 of this article is not in effect, as to any such vehicle, he  
12 shall notify the department of motor vehicles of such finding  
13 within five days if no citation requiring a court appearance  
14 is issued: *Provided*, That such law-enforcement officer or  
15 agent shall not stop vehicles solely to inquire as to the certi-  
16 ficate of insurance. A defendant, who is charged with a traffic  
17 offense that requires an appearance in court, shall present the  
18 court at the time of his or her appearance or subsequent ap-  
19 pearance with proof that the defendant had security at the time  
20 of the traffic offenses as required by this article. If, as a result  
21 of the defendant's failure to show proof, the court determines  
22 that the defendant has violated this article, it shall notify the  
23 department of motor vehicles within five days.

### ARTICLE 3. SECURITY FOLLOWING ACCIDENT.

#### §17D-3-5. Requirements as to policy or bond; criminal penalties.

1 (a) No policy or bond shall be effective under section  
2 four of this article unless issued by an insurance company  
3 or surety company authorized to do business in this state,  
4 except as provided in subsection (b) of this section, nor  
5 unless such policy or bond is subject, if the accident has  
6 resulted in bodily injury or death, to a limit, exclusive of  
7 interest and costs, of not less than twenty thousand dollars  
8 because of bodily injury to or death of one person in any  
9 one accident, and, subject to said limit for one person, to  
10 a limit of not less than forty thousand dollars because of  
11 bodily injury to or death of two or more persons in any one  
12 accident, and, if the accident has resulted in injury to, or  
13 destruction of property, to a limit of not less than ten thou-  
14 sand dollars because of injury to or destruction of property  
15 of others in any one accident.

16 (b) No policy or bond shall be effective under section  
17 four of this article with respect to any vehicle which was  
18 not registered in this state or was a vehicle which was regis-  
19 tered elsewhere than in this state at the effective date of  
20 the policy or bond or the most recent renewal thereof, unless  
21 the insurance company or surety company issuing such  
22 policy or bond is authorized to do business in this state, or  
23 if said company is not authorized to do business in this state,  
24 unless it shall execute a power of attorney authorizing the  
25 commissioner to accept service on its behalf of notice or  
26 process in any action upon such policy or bond arising out  
27 of such accident.

28 (c) (1) Upon receipt of notice of such accident from the  
29 commissioner, the insurance company or surety company  
30 named in such notice or the authorized licensed agent or  
31 representative of the company shall notify the commissioner,  
32 in such manner as he may require, within thirty calendar  
33 days that the coverage was not in effect at the time of such  
34 accident.

35 (2) Any insurance company, surety company or the agent  
36 or representative of such company who fails to provide the  
37 notification to the commissioner if coverage was not in effect  
38 or provides false information, is guilty of a misdemeanor,  
39 and, upon conviction thereof, shall be fined not more than  
40 five hundred dollars, or be imprisoned in the county jail  
41 for a period not to exceed fifteen days, or both fined and  
42 imprisoned.

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## CHAPTER 117

(Com. Sub. for H. B. 1497—By Delegate Bird and Delegate Childers)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to original and renewal of registration and issuance of certificates of title;

authorizing special registration plates for national guard members; providing for the issuance of personalized registration plates for motorcycles; and fees.

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

That section fourteen, 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-3-14. Registration plates generally.**

1 The department upon registering a vehicle shall issue to  
2 the owner one registration plate for a motorcycle, trailer,  
3 semitrailer or other motor vehicle.

4 Every registration plate shall have displayed upon it the  
5 registration number assigned to the vehicle for which it is  
6 issued, also the name of this state, which may be abbreviated,  
7 and the year number for which it is issued or the date of  
8 expiration thereof.

9 Such registration plate and the required letters and numerals  
10 thereon, except the year number for which issued or the date  
11 of expiration shall be of sufficient size to be plainly readable  
12 from a distance of one hundred feet during daylight, said  
13 registration numbering to begin with number two.

14 The color of the registration plates shall be blue and gold  
15 of reflectorized material.

16 The department shall not issue permit to be issued, or dis-  
17 tribute any special numbers except as follows:

18 (a) The governor shall be issued registration plates, on  
19 one of which shall be imprinted the numeral one and on the  
20 other the word one.

21 (b) Upon appropriate application, there shall be issued  
22 to the secretary of state, state superintendent of free  
23 schools, auditor, treasurer, commissioner of agriculture,  
24 and the attorney general, the members of both houses of the  
25 Legislature, including the elected officials thereof, the

26 justices of the supreme court of appeals of West Virginia,  
27 the representatives and senators of the state in the  
28 Congress of the United States, the judges of the United  
29 States district courts for the state of West Virginia and  
30 the judges of the United States court of appeals for the  
31 fourth circuit, if any of said judges shall be residents of  
32 West Virginia, a special registration plate for a motor vehicle  
33 owned by said official or spouse, but not to exceed two  
34 plates for each such official, which plate shall bear the initials  
35 of the individual, or any combination of letters not to exceed  
36 six, which combination of letters shall be limited to a con-  
37 traction of the proper name or names of such individual or a  
38 familiar form applicable to such names or a name by which  
39 the individual is generally known, and shall not include any  
40 name that might be construed as a slogan or advertisement  
41 which has no relation to the name or names of such individual  
42 or to a reasonable name by which he is generally known, to-  
43 gether with a designation of the office and which plate shall  
44 supersede, during his term of office and while such motor  
45 vehicle is owned by said official or spouse, the regular  
46 numbered plate assigned to him.

47 (c) Upon receipt of an application on a form prescribed  
48 by the department and receipt of written evidence from the  
49 chief executive officer of the army national guard or air  
50 national guard, as appropriate, that the applicant is a mem-  
51 ber thereof, the department shall issue to any member of  
52 the national guard of this state a special registration plate  
53 designed by the commissioner for a motor vehicle owned by  
54 the member or the member's spouse, but not to exceed one  
55 plate for each such member.

56 (d) Upon appropriate application, any owner of a motor  
57 vehicle subject to Class A registration or the owner of a  
58 motorcycle subject to Class G registration under the provisions  
59 of this article may request that the department issue a registra-  
60 tion plate bearing a maximum of six letters or numbers.  
61 The department shall attempt to comply with such request  
62 wherever possible and shall promulgate appropriate rules  
63 and regulations for the orderly distribution of such plates:  
64 *Provided*, That for purposes of this subdivision, such regis-



65 tration plates so requested and issued shall include all plates  
66 bearing the numbers two through two thousand and shall  
67 be subject to the provisions of subdivision (f) of this section.

68 (e) Upon appropriate application, there shall be issued  
69 to any disabled veteran, who is exempt from the payment of  
70 registration fees under the provisions of this chapter, a regis-  
71 tration plate which bears the letters "DV" in red, and also  
72 the regular identification numerals in red.

73 (f) In addition to the regular registration fees set forth in  
74 section three, article ten of this chapter, a fee of twenty-five  
75 dollars shall be paid to the department in each case in which  
76 an application for a special registration plate is made as  
77 provided in subdivisions (a), (b), (c) and (d): *Provided,*  
78 That nothing in this section shall be construed to require a  
79 charge for a free prisoner of war license plate authorized by  
80 other provisions of this code.

81 Notwithstanding the provisions of this section, or of any  
82 other provision of this chapter, the commissioner may, in his  
83 discretion, issue a type of registration plate suitable for  
84 permanent use on motor vehicles, trailers and semitrailers,  
85 together with appropriate devices to be attached thereto to  
86 indicate the year for which such vehicles have been properly  
87 registered or the date of expiration of such registration. The  
88 design of such plates shall be determined by the commissioner.

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## CHAPTER 118

(Com. Sub. for S. B. 602—By Senator Tucker)

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[Passed March 10, 1984: 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; and to amend article six of said chapter by adding thereto a new section, designated section ten-b, relating to the transfer of title to a vehicle by operation of law and stating that in the event title is vested in

a person or financial institution as the result of a lien or encumbrance upon the vehicle, such person or institution need not obtain a new registration, but may endorse the title to a subsequent purchaser and that such a transfer is not subject to the privilege tax; and relating to special license plates for financial institutions which repossess vehicles in the ordinary course of their business and which may, therefore, take temporary possession and have need to drive such repossessed vehicles.

*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; and that article six of said chapter be amended by adding thereto a new section, designated section ten-b, all to read as follows:

**Article**

4. Transfers of Title or Interests.
5. Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers, Etc.

**ARTICLE 4. TRANSFERS OF TITLE OR INTERESTS.**

**§17A-4-5. Transfer by operation of law.**

1 Whenever the title or interest of an owner in or to a  
2 registered vehicle shall pass to another otherwise than by  
3 voluntary transfer, the registration thereof shall expire and  
4 the vehicle shall not be operated upon the highways unless  
5 and until the person entitled to possession of such vehicle  
6 shall apply for and obtain the registration thereof, except  
7 that such vehicle may be operated by the person entitled to  
8 its possession or his legal representative upon the highways  
9 for a distance not exceeding seventy-five miles upon  
10 displaying upon such vehicle the registration plates issued  
11 to the former owner, or in the event title has become vested  
12 in the person holding a lien or encumbrance upon said  
13 vehicle, such person may apply to the department for and  
14 obtain special plates as may be issued under this chapter to  
15 dealers or others and may operate any said repossessed  
16 vehicle under such special plates only for purposes of  
17 transporting the same to a garage or warehouse or for  
18 purposes of demonstrating or selling the same: *Provided,*

19 That the commissioner is authorized to transfer the plates  
20 of a deceased person to his legal heir or legatee upon  
21 payment of a transfer fee of one dollar.

22 Upon any transfer the new owner may secure a new  
23 registration and certificate of title upon proper application  
24 and upon presentation of the last certificate of title if  
25 available, and such instruments or documents of authority  
26 or certified copies thereof as may be sufficient or required  
27 by law to evidence or effect a transfer of title or interest in or  
28 to chattels in such case. In the event title has become vested  
29 in the person or financial institution holding a lien or  
30 encumbrance upon said vehicle, such person or institution  
31 need not obtain a new registration of said vehicle or  
32 forward the certificate of title to the department in order to  
33 sell the vehicle, but the person or institution upon transfer  
34 of title or interest to another shall execute and acknowledge  
35 an assignment and warranty of title upon the certificate of  
36 title and deliver the same not later than thirty days from the  
37 date of the sale to the purchaser. The person or institution  
38 holding a lien or encumbrance upon the vehicle who  
39 acquires the vehicle as a result of the lien or encumbrance  
40 and subsequently, within sixty days, sells the vehicle in  
41 satisfaction of the debt creating the lien or encumbrance,  
42 shall not be subject to any privilege tax or personal property  
43 tax on the vehicle imposed by any other section.

**ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR  
DISMANTLERS; SPECIAL PLATES; TEMPORARY  
PLATES OR MARKERS, ETC.**

**§17A-6-10b. Special plates for financial institutions; fee.**

1 (1) Notwithstanding any of the other provisions of this  
2 article, a financial institution may operate or move a vehicle  
3 upon the highways and streets of this state solely for the  
4 purposes of transporting such vehicle, in conjunction with a  
5 repossession or sale of said vehicle conducted in the  
6 ordinary course of such institution's business in financing  
7 the purchase of the vehicle or where the vehicle otherwise  
8 serves as collateral or security in a loan transaction,  
9 without first registering each such vehicle upon the  
10 condition that any such vehicle display thereon, in a  
11 manner prescribed by the commissioner, a special plate or

12 plates issued to such financial institution as provided in this  
13 section.

14 (2) Any financial institution may make application to  
15 the commissioner upon a form prescribed by him for a  
16 certificate containing a general distinguishing number and  
17 for a special plate or plates. The applicant shall submit  
18 proof of its status as a bona fide financial institution  
19 requiring such special plates as required by the  
20 commissioner. The commissioner shall determine that the  
21 applicant is a bona fide financial institution eligible to  
22 receive a special plate or plates under the provisions of this  
23 section and that said institution does, as a regular incident  
24 to its business, repossess and sell vehicles and have need to  
25 transport said vehicles in conjunction with the repossession  
26 or sale.

27 (3) The commissioner, upon approving any such  
28 application, shall issue to the applicant a certificate  
29 containing the applicant's name and address and the  
30 general distinguishing number assigned to the applicant.  
31 The commissioner shall also issue a special plate, or special  
32 plates, as applied for, which shall have displayed thereon  
33 the general distinguishing number assigned to the  
34 applicant. Each plate shall also contain a number or symbol  
35 identifying the same from every other plate or plates  
36 bearing the same general distinguishing number.

37 (4) The annual fee for a license certificate for a financial  
38 institution and one special plate shall be one hundred  
39 dollars. Additional special plates, not to exceed four, shall  
40 be available upon appropriate application to the  
41 commissioner at a fee of twenty-five dollars each.

42 (5) Every financial institution shall keep a written  
43 record of the vehicle upon which such special plates are  
44 used, the time during which each is used upon a particular  
45 vehicle, and the location of the place of repossession,  
46 storage and subsequent delivery, if any, of each vehicle,  
47 which record shall be open to inspection by any police  
48 officer or employee of the department.

49 (6) The provisions of this section shall not apply to any

50 work, company or service vehicles of the financial in-  
51 stitution.

52 (7) The financial institution shall be required to furnish  
53 a certificate of insurance in the amount of twenty thousand  
54 dollars because of bodily injury to or death of any one  
55 person in any one accident, forty thousand dollars because  
56 of bodily injury or death to two or more persons in any one  
57 accident, and ten thousand dollars because of injury to or  
58 destruction of property of others in any one accident.

59 (8) For purposes of this section, "financial institution"  
60 shall mean any state bank, state savings and loan  
61 association, state building and loan association, national  
62 bank, federally chartered savings and loan, savings bank,  
63 industrial bank, industrial loan company or similar  
64 institution.

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## CHAPTER 119

(H. B. 1965—By Delegate Davis and Delegate Chambers)

[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to motor vehicles; providing priority security interest for a security agreement on a new motor vehicle.

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

That article four-a, chapter seventeen-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 sixteen, to read as follows:

**ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND PURCHASERS.**

**§17A-4A-16. Priority security interest on new motor vehicles.**

1 Any security agreement covering a security interest in a

2 motor vehicle, if such instrument is accompanied by delivery  
 3 of a manufacturer's or importer's certificate of origin, and  
 4 followed by actual and continued possession of such cer-  
 5 tificate by the holder of said instrument, shall be valid as  
 6 against the creditors of the debtor, whether armed with  
 7 process or not, and against secured parties, and other lien-  
 8 holders or claimants. The interest of the holder of said  
 9 instrument shall be valid against subsequent purchasers only  
 10 if there is no consent by the holder of said instrument to  
 11 expose the covered motor vehicle for sale: *Provided*, That  
 12 such protected interest shall be void as to any bona fide  
 13 purchaser for value without notice.

14 Nothing herein shall be deemed to affect the provisions of  
 15 section one of this article.

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## CHAPTER 120

(H. B. 1273—By Delegate Faircloth and Delegate Wiedebusch)

[Passed February 21, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven-a, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the driver's licensing advisory board.

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

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

### **ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.**

#### **§17B-2-7a. Driver's licensing advisory board.**

1 There is hereby created a driver's licensing advisory board,  
 2 which shall consist of five members to be appointed by  
 3 the governor, by and with the advice and consent of the  
 4 Senate, for terms of three years, except that as to the

5 members first appointed, two shall be appointed for a term  
6 of three years, two shall be appointed for a term of two  
7 years, and one shall be appointed for a term of one year,  
8 all from the first day of July, one thousand nine hundred  
9 seventy-four. All vacancies occurring on the board shall be  
10 filled by the governor, by and with the advice and consent  
11 of the Senate. One member of the board shall be an  
12 optometrist duly registered to practice optometry in this  
13 state and the other four members of the board shall be  
14 physicians or surgeons duly licensed to practice medicine or  
15 surgery in this state. The governor shall appoint persons  
16 qualified to serve on the board who, in his opinion, will  
17 best serve the work and function of the board.

18 The board shall advise the commissioner of motor vehicles  
19 as to vision standards and all other medical criteria of  
20 whatever kind or nature relevant to the licensing of per-  
21 sons to operate motor vehicles under the provisions of this  
22 chapter. The board shall, upon request, advise the com-  
23 missioner of motor vehicles as to the mental or physical  
24 fitness of an applicant for, or the holder of, a license to  
25 operate a motor vehicle. The board shall furnish the com-  
26 missioner with all such medical standards, statistics, data,  
27 professional information and advice as he may reasonably  
28 request.

29 The members of the board shall receive an honorarium of  
30 thirty-five dollars for each day actually devoted to the busi-  
31 ness of the board, and shall be reimbursed for all reasonable  
32 and necessary expenses actually incurred by them in the  
33 discharge of their official duties.

34 After having conducted a performance and fiscal audit  
35 through its joint committee on government operations, pur-  
36 suant to section nine, article ten, chapter four of this code,  
37 the Legislature hereby finds and declares that the drivers'  
38 licensing advisory board should be continued and reestablished.  
39 Accordingly, notwithstanding the provisions of section four,  
40 article ten, chapter four of this code, the drivers' licensing  
41 advisory board shall continue to exist until the first day of  
42 July, one thousand nine hundred ninety.

## CHAPTER 121

(Com. Sub. for H. B. 1062—By Delegate Spencer)

[Passed February 22, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to stopping, standing or parking privileges for disabled; qualification; application; violations; making it a misdemeanor offense to park a vehicle without special license plate or decal in reserved areas for disabled except for limited purposes of loading or unloading a handicapped or physically disabled passenger; penalties.

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

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

### ARTICLE 13. STOPPING, STANDING AND PARKING.

#### §17C-13-6. Stopping, standing or parking privileges for disabled; qualification; application; violation.

1 (a) Any owner of a class A motor vehicle subject to  
2 registration under the provisions of article three, chapter  
3 seventeen-a of this code, who is a physically handicapped  
4 person with limited mobility, or whose spouse or other  
5 immediate family member is a physically handicapped person  
6 with limited mobility and resides with him, may apply for a  
7 special registration plate by submitting to the commissioner:

8 (1) An application therefor on a form prescribed and  
9 furnished by the commissioner;

10 (2) A certificate issued by a person licensed to practice  
11 medicine in this state stating that the applicant or the ap-  
12 plicant's spouse or a member of the applicant's immediate  
13 family residing with him is a physically handicapped person  
14 with limited mobility as defined in this section.

15 Upon receipt of the application, the physician's certificate



16 and the registration fee, if he finds that the applicant qualifies  
17 for the special registration plate provided for in this sub-  
18 section, the commissioner shall issue to such applicant an  
19 appropriately designed and appropriately designated special  
20 registration plate. The special plate shall be used in place  
21 of a regular license plate.

22 As used in this section, a physically handicapped person  
23 with limited mobility is any person who suffers from a  
24 permanent physical condition making it unduly difficult and  
25 burdensome for such person to walk.

26 Any person who falsely or fraudulently obtains or seeks  
27 to obtain the special plate provided for in this subsection  
28 (a), and any person who falsely certifies that a person is  
29 physically handicapped with limited mobility in order that  
30 an applicant may be issued the special plate, is guilty of a  
31 misdemeanor, and, upon conviction thereof, in addition to  
32 any other penalty he may otherwise incur, shall be fined not  
33 less than one hundred dollars nor more than one thousand  
34 dollars, or imprisoned in the county jail not more than one  
35 year, or both fined and imprisoned.

36 (b) Any physically disabled person, and any person whose  
37 spouse or other immediate family member is a physically  
38 disabled person and resides with him, may apply for a vehicle  
39 decal for a class A vehicle by submitting to the com-  
40 missioner:

41 (1) An application therefor on a form prescribed and  
42 furnished by the commissioner;

43 (2) A certificate issued by a person licensed to practice  
44 medicine in this state stating that the applicant or the ap-  
45 plicant's spouse or a member of the applicant's immediate  
46 family residing with him is a physically disabled person, as  
47 defined in this section, and stating the expected duration of the  
48 disability; and

49 (3) A fee of one dollar.

50 Upon receipt of the application, the physician's certificate  
51 and the registration fee, if he finds that the applicant quali-

52 files for the vehicle decal provided for in this subsection, the  
53 commissioner shall issue to such applicant an appropriately  
54 designed decal. The decal shall be displayed on the motor  
55 vehicle in the manner prescribed by the commissioner and  
56 shall be valid for such period of time as the certifying phy-  
57 sician has determined that the disability will continue, which  
58 period of time, reflecting the date of expiration, shall be con-  
59 spicuously shown on the face of the decal.

60 As used in this section "physically disabled person" means  
61 any person who has sustained a temporary disability rendering  
62 it unduly difficult and burdensome for him to walk.

63 Any person who falsely or fraudulently obtains or seeks  
64 to obtain the vehicle decal provided for in this subsection,  
65 and any person who falsely certifies that a person is physically  
66 disabled in order that an applicant may be issued the vehicle  
67 decal, is guilty of a misdemeanor, and, upon conviction there-  
68 of, in addition to any other penalty he may otherwise incur,  
69 shall be fined not less than fifty nor more than one hundred  
70 dollars, or imprisoned in the county jail not more than thirty  
71 days, or both fined and imprisoned.

72 (c) Free stopping, standing or parking places marked "re-  
73 served for disabled persons" or "handicapped parking" shall be  
74 designated in close proximity to all state, county and municipal  
75 buildings and other public facilities. Such places shall be re-  
76 served solely for physically disabled and handicapped persons  
77 during the hours that such buildings are open for business.

78 Any person whose vehicle properly displays a valid spe-  
79 cial registration plate or decal may park the vehicle for  
80 unlimited periods of time in parking zones unrestricted as  
81 to length of parking time permitted: *Provided*, That this  
82 privilege does not mean that the vehicle may park in any  
83 zone where stopping, standing or parking is prohibited or  
84 which creates parking zones for special types of vehicles or  
85 which prohibits parking during heavy traffic periods during  
86 specified rush hours or where parking would clearly present  
87 a traffic hazard. To the extent any provision of any ordinance

88 of any political subdivision of this state is contrary to the  
89 provisions of this section, the provisions of this section  
90 shall take precedence and shall apply.

91 The privileges provided for in this section shall apply only  
92 during those times when the vehicle is being used for the  
93 transportation of a physically handicapped or disabled per-  
94 son. Any person who knowingly exercises, or attempts to exer-  
95 cise, such privileges at a time when the vehicle is not being used  
96 for the transportation of a physically handicapped or disabled  
97 person is guilty of a misdemeanor, and, upon conviction there-  
98 of, in addition to any other penalty he may otherwise incur,  
99 shall be fined not less than ten nor more than fifty dollars, or  
100 imprisoned in the county jail for not more than thirty days,  
101 or both fined and imprisoned.

102 (d) No person may stop, stand or park a motor vehicle  
103 in an area designated, zoned or marked for the handicapped  
104 or physically disabled, when such person is not physically  
105 disabled or handicapped and does not have displayed upon his  
106 vehicle a distinguishing insignia for the handicapped issued  
107 by the commissioner: *Provided*, That any person in the act  
108 of transporting a handicapped or physically disabled person,  
109 as defined by this article, may stop, stand or park a motor  
110 vehicle not displaying a distinguishing insignia for the handi-  
111 capped in an area designated, zoned or marked for the handi-  
112 capped or physically disabled for the limited purposes of  
113 loading or unloading his handicapped or physically disabled  
114 passenger: *Provided, however*, That such vehicle shall be  
115 promptly moved after the completion of such limited purposes.

116 Any person who violates the provisions of this subsection  
117 is guilty of a misdemeanor, and, upon conviction thereof,  
118 shall be fined not more than twenty-five dollars.

119 (e) The commissioner shall adopt and promulgate rules  
120 and regulations in accordance with the provisions of chapter  
121 twenty-nine-a of this code to effectuate the provisions of  
122 this section.

## CHAPTER 122

(Com. Sub. for H. B. 1029—By Delegate Wooten and Delegate Roop)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight, relating to disabled persons parking places on certain private facilities; signs designating places to be provided.

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

That article thirteen, chapter seventeen-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 eight, to read as follows:

### ARTICLE 13. STOPPING, STANDING AND PARKING.

#### §17C-13-8. Disabled parking places on private facilities; signs designating places.

- 1 Upon request of operators of privately-owned facilities serv-
- 2 ing the general public, the director of the division of vocational
- 3 rehabilitation may provide signs to designate disabled persons
- 4 parking places.

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## CHAPTER 123

(Com. Sub. for H. B. 1101—By Delegate Gilliam)

[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article nineteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the circumstances under which a nonresident motorist arrested for traffic violations shall be immediately taken before a magistrate or court; and relating to the circumstances under which such nonresident

motorist shall be issued a written notice to appear in court and not be taken immediately before a magistrate or court.

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

That section three, article nineteen, 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 19. PARTIES, PROCEDURE UPON ARREST, AND REPORTS IN CRIMINAL CASES.**

**§17C-19-3. When person arrested must be taken immediately before a magistrate or court.**

- 1 (a) Whenever any person is arrested for any violation of  
2 this chapter punishable as a misdemeanor, the arrested person  
3 shall be immediately taken before a magistrate or court within  
4 the county in which the offense charged is alleged to have  
5 been committed and who has jurisdiction of the offense and  
6 is nearest or most accessible with reference to the place where  
7 the arrest is made, in any of the following cases:
  - 8 (1) When a person arrested demands an immediate ap-  
9 pearance before a magistrate or court;
  - 10 (2) When the person is arrested upon a charge of negligent  
11 homicide;
  - 12 (3) When the person is arrested upon a charge of driving  
13 while under the influence of alcohol, or under the influence  
14 of any controlled substance, or under the influence of any  
15 other drug, or under the combined influence of alcohol and  
16 any controlled substance or any other drug;
  - 17 (4) When the person is arrested upon a charge of failure  
18 to stop in the event of an accident causing death, personal  
19 injury or damage to property;
  - 20 (5) When the person is arrested upon a charge of violating  
21 section fourteen, article seventeen of this chapter relating to  
22 weight violations, except as otherwise provided in that section;
  - 23 (6) When the person arrested is a resident of a state  
24 that has not entered into a nonresident violator compact with  
25 this state;

26 (7) In any other event when the person arrested refuses  
27 to give his written promise to appear in court as provided  
28 in section four of this article.

29 (b) When the person arrested is a resident of a state  
30 that has entered into a nonresident violator compact with  
31 this state, the arresting officer shall issue the person a written  
32 notice as provided for in section four of this article and may  
33 not take the person immediately before a magistrate or court,  
34 except under the terms of the compact or under the circum-  
35 stances set forth in subsection (a) of this section.

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## CHAPTER 124

(Com. Sub. for H. B. 1605—By Delegate Love)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend article ten, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to the power of municipalities to authorize the recorder, assistant recorder, municipal clerk or deputy municipal clerk to issue warrants, administer oaths, and to accept and approve sureties and bonds; providing for the appointment of such official and for the removal of such authority; and setting forth limitations on the authority of such official.

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

That article ten, 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 four, to read as follows:

### **ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.**

#### **§8-10-4. Powers and duties of recorder or clerk relating to warrants, oaths, sureties and bonds.**

1 Any municipality may provide by charter provision and  
2 ordinance, or notwithstanding a charter provision to the

3 contrary, a municipality may provide by ordinance, that the  
4 governing body may vest in the recorder, assistant recorder,  
5 municipal clerk or deputy municipal clerk, the authority to  
6 issue warrants for arrest, to administer oaths, and to ac-  
7 cept and approve sureties and bonds, and any such ordinance  
8 shall provide for the appointment of such person by con-  
9 firmation of the governing body and for the removal of such  
10 authority by action of the governing body: *Provided*, That  
11 such person may only issue warrants, administer oaths, or  
12 accept and approve sureties and bonds, in the absence of  
13 the mayor, or if there be a police court or municipal judge,  
14 in the absence of such police court or municipal judge.

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## CHAPTER 125

(S. B. 534—By Mr. McGraw, Mr. President)

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[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article fourteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-a; and to amend article fifteen of said chapter by adding thereto a new section, designated section eighteen-a, all relating to review by members of police and fire departments of their individual promotional examination questions, answers and scores; public hearing and review of any individual's examination by the policemen's or firemen's civil service commission upon request of the individual; certification of eligibility lists after exhaustion of commission review; judicial review of commission decisions.

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

That article fourteen, 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 thirteen-a; and that article fifteen of said chapter be

amended by adding thereto a new section, designated section eighteen-a, all to read as follows:

**Article**

14. **Law and Order; Police Force or Departments; Powers; Authority and Duties of Law-enforcement Officials and Policemen; Police Matrons; Special School Zone and Parking Lot or Parking Building Police Officers; Civil Service for Certain Police Departments.**
15. **Fire Fighting; Fire Companies and Departments; Civil Service for Paid Fire Departments.**

**ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.**

**PART V. CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.**

**§8-14-13a. Individual review of test and answers from promotional examination.**

1 (a) Any applicant for promotion to any position in a  
2 paid police department may personally review such ap-  
3 plicant's examination questions, answers and scores to  
4 all parts of any competitive examination within five  
5 days after the posting of results of the competitive ex-  
6 amination. Such five days shall not include the day the  
7 examination results are posted, nor any day that the  
8 office of the recorder of the city is not open for business  
9 to the public. The commission shall not certify the list  
10 of eligibles until all procedures before the commission  
11 under this section have been exhausted. The commis-  
12 sion shall provide any applicant requesting review of  
13 such applicant's examination questions, answers and  
14 scores with a location to review such materials.

15 (b) If any applicant feels aggrieved by the answers  
16 and/or scores received on a promotional competitive ex-  
17 amination, the commission shall, at the request of such  
18 applicant made within five days as calculated above,  
19 appoint a date, time and place for a public hearing, at  
20 which time such applicant may appear, with or without  
21 counsel. The commission shall review all parts of the



22 competitive examination questions, answers and scores  
23 of the aggrieved applicant, and testimony shall be taken.  
24 The commission shall subpoena, at the expense of the  
25 applicant, any competent witnesses requested by such  
26 applicant.

27 (c) After such review, the commission shall render a  
28 decision either in favor of the applicant, and therefore  
29 adjust the certified eligibility list to provide for such  
30 applicant's adjusted score, or the commission shall rule  
31 that the applicant's prior score should remain unchanged.  
32 Any decision rendered by the commission under this  
33 section shall be in writing and shall set forth findings  
34 of fact and conclusions of law relied upon to reach such  
35 decision.

36 (d) The commission shall not certify a list of eligibles  
37 after the completion of a competitive promotional ex-  
38 amination until all applicants for such position have  
39 exhausted the procedures before the commission set  
40 forth in this section.

41 (e) If any applicant is aggrieved by a decision rendered  
42 by the commission under this section, such applicant may,  
43 within twenty days of the date of the commission's deci-  
44 sion, seek judicial review thereof in the circuit court of  
45 the county wherein such municipality is located. Nothing  
46 in this section shall be construed as depriving such  
47 applicant of the right to seek a writ of mandamus to the  
48 appropriate court within the time specified in this sub-  
49 section.

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPART-  
MENTS; CIVIL SERVICE FOR PAID FIRE DE-  
PARTMENTS.**

**PART IV. CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.**

**§8-15-18a. Individual review of test and answers from pro-  
motional examination.**

1 (a) Any applicant for promotion to any position in a  
2 paid fire department may personally review such ap-  
3 plicant's examination questions, answers and scores to  
4 all parts of any competitive examination within five days

5 after the posting of results of the competitive examina-  
6 tion. Such five days shall not include the days the ex-  
7 amination results are posted, nor any day that the office  
8 of the recorder of the city is not open for business to the  
9 public. The commission shall not certify the list of  
10 eligibles until all procedures before the commission under  
11 this section have been exhausted. The commission shall  
12 provide any applicant requesting review of such ap-  
13 plicant's examination questions, answers and scores with  
14 a location to review such materials.

15 (b) If any applicant feels aggrieved by the answers  
16 and/or scores received on a promotional competitive  
17 examination, the commission shall, at the request of such  
18 applicant made within five days as calculated above,  
19 appoint a date, time and place for a public hearing, at  
20 which time such applicant may appear, with or without  
21 council. The commission shall review all parts of the  
22 competitive examination questions, answers and scores  
23 of the aggrieved applicant, and testimony shall be taken.  
24 The commisison shall subpoena, at the expense of the ap-  
25 plicant, any competent witnesses requested by such ap-  
26 plicant.

27 (c) After such review, the commission shall render a  
28 decision either in favor of the applicant, and therefore  
29 adjust the eligibility list to provide for such applicant's  
30 adjusted score, or the commission shall rule that the  
31 applicant's prior score should remain unchanged. Any  
32 decision rendered by the commission under this section  
33 shall be in writing and shall set forth findings of fact and  
34 conclusions of law relied upon to reach such decision.

35 (d) The commission shall not certify a list of eligibles  
36 after the completion of a competitive promotional ex-  
37 amination until all applicants for such position have ex-  
38 hausted the procedures before the commission set forth  
39 in this section.

40 (e) If any applicant is aggrieved by a decision rendered  
41 by the commission under this section, such applicant  
42 may, within twenty days of the date of the commission's  
43 decision, seek judicial review thereof in the circuit

44 court of the county wherein such municipality is located.  
45 Nothing in this section shall be construed as depriving  
46 such applicant of the right to seek a writ of mandamus  
47 to the appropriate court within the time specified in this  
48 subsection.

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## CHAPTER 126

(H. B. 1031—By Delegate Love)

[Passed February 22, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the power and authority to form volunteer fire companies; number of persons who may serve; recordation of statement; organization.

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

That section four, 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 II. VOLUNTEER FIRE COMPANIES**

**§8-15-4. Power and authority to form fire companies; recordation of statement; organization.**

1 Any number of persons, not less than twenty, residing with-  
2 in the corporate limits of a municipality without a paid fire  
3 department may form themselves into a company for ex-  
4 tinguishing fires therein. A writing stating the formation of  
5 such company, with the names of the members thereof sub-  
6 scribed thereto, shall be recorded in the office of the clerk of  
7 the county commission of the county wherein such municipi-  
8 pality or the major portion of the territory thereof is located,  
9 after which the members of the company shall elect its

10 officers, including a commander, and make rules and regu-  
11 lations for effecting its object consistent with the laws of  
12 the state and the ordinances of such municipality. A volun-  
13 teer fire company shall be subject to the authority of the  
14 governing body.

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## CHAPTER 127

(Com. Sub. for H. B. 1069—By Delegate Love)

[Passed March 7, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight-b, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fire companies and departments; and providing that revenues allocated to volunteer and part volunteer fire companies from the municipal pensions and protection fund may be expended for capital improvements, retirement of debts and payment of utility bills.

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

That section eight-b, 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.**

**§8-15-8b. Authorized expenditures of revenues from the municipal pensions and protection fund.**

- 1 Revenues allocated to volunteer and part volunteer fire
- 2 companies and departments may be expended only for the
- 3 items listed in subsections (a) through (g) of this section.
- 4 Such expenditures may be made for the following:
  - 5 (a) Personal protective equipment, including protective
  - 6 headgear, bunker coats, pants, boots, combination of bunker
  - 7 pants and boots, coats and gloves;

- 8 (b) Equipment for compliance with the national fire  
9 protection standard or automotive fire apparatus, NFPA-1901;
- 10 (c) Compliance with insurance service office recommenda-  
11 tions relating to fire departments;
- 12 (d) Rescue equipment, communications equipment and  
13 ambulance equipment: *Provided*, That no moneys received  
14 from the municipal pensions and protection fund may be used  
15 for equipment for personal vehicles owned or operated by  
16 volunteer fire company or department members;
- 17 (e) Capital improvement;
- 18 (f) Retirement of debts; and
- 19 (g) Payment of utility bills.

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## CHAPTER 128

(H. B. 1623—By Delegate Wiedebusch and Delegate Ballouz)

[Passed March 7, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and six, article nineteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal revenue bond financing; estimates of costs; amount, negotiability and execution of bonds; ordinance for issuance of bonds; rates for services; removal of limited rates of interest; and return on bonds for waterworks or electric power systems.

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

That sections four and six, article nineteen, 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 19. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS.

#### PART IV. REVENUE BOND FINANCING.

- §8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.
- §8-19-6. Amount, negotiability and execution of bonds.

**§8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.**

1 Whenever a municipality shall, under the provisions of this  
2 article, determine to acquire, by purchase or otherwise, con-  
3 struct, establish, extend or equip a waterworks system, or to  
4 construct any additions, betterments or improvements to any  
5 waterworks or electric power system, it shall cause an esti-  
6 mate to be made of the cost thereof, and shall, by ordinance,  
7 provide for the issuance of revenue bonds under the provisions  
8 of this article, which ordinance shall set forth a brief descrip-  
9 tion of the contemplated undertaking, the estimated cost there-  
10 of, the amount, rate or rates of interest, the time and place of  
11 payment, and other details in connection with the issuance of  
12 the bonds. Such bonds shall be in such form and shall be  
13 negotiated and sold in such manner and upon such terms as  
14 the governing body of such municipality may by ordinance  
15 specify. All such bonds and the interest thereon, and all prop-  
16 erties and revenues and income derived from such waterworks  
17 or electric power system, shall be exempt from all taxation by  
18 this state, or any county, municipality, political subdivision or  
19 agency thereof. Such bonds shall bear interest at a rate per  
20 annum set by the municipality, payable at such times, and  
21 shall be payable as to principal at such times, not exceeding  
22 forty years from their date, and at such place or places, within  
23 or without the state, as shall be prescribed in the ordinance  
24 providing for their issuance. Such ordinance shall also declare  
25 that a statutory mortgage lien shall exist upon the property  
26 so to be acquired, constructed, established, extended or equip-  
27 ped, fix minimum rates or charges for water to be collected  
28 prior to the payment of all of said bonds and shall pledge the  
29 revenues derived from the waterworks or electric power sy-  
30 stem for the purpose of paying such bonds and interest there-  
31 on, which pledge shall definitely fix and determine the amount  
32 of revenues which shall be necessary to be set apart and applied  
33 to the payment of the principal of and interest upon the bonds  
34 and the proportion of the balance of such revenues, which are  
35 to be set aside as a proper and adequate depreciation account,  
36 and the remainder shall be set aside for the reasonable and  
37 proper maintenance and operation thereof. The rates or  
38 charges to be charged for the services from such waterworks

39 or electric power system shall be sufficient at all times to  
40 provide for the payment of interest upon all bonds and to  
41 create a sinking fund to pay the principal thereof as and  
42 when the same become due, and reasonable reserves therefor,  
43 and to provide for the repair, maintenance and operation of  
44 the waterworks or electric power system, and to provide an  
45 adequate depreciation fund, and to make any other payments  
46 which shall be required or provided for in the ordinance  
47 authorizing the issuance of said bonds.

**§8-19-6. Amount, negotiability and execution of bonds.**

1 Bonds herein provided for shall be issued in such amounts  
2 as may be necessary to provide sufficient funds to pay all  
3 costs of acquisition, construction, establishment, extension or  
4 equipment, including engineering, legal and other expenses,  
5 together with interest to a date six months subsequent to the  
6 estimated date of completion. Bonds issued under the provi-  
7 sions of this article are hereby declared to be negotiable in-  
8 struments, and the same shall be executed by the proper legally  
9 constituted authorities of the municipality, and be sealed with  
10 the corporate seal of the municipality, and in case any of the  
11 officers whose signatures appear on the bonds or coupons  
12 shall cease to be such officers before delivery of such bonds,  
13 such signatures shall nevertheless be valid and sufficient for  
14 all purposes the same as if they had remained in office until  
15 such delivery. All signatures on the bonds or coupons and the  
16 corporate seal may be mechanically reproduced if authorized  
17 in the ordinance authorizing the issuance of the bonds.

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## CHAPTER 129

(S. B. 285—By Senator Boettner)

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[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

**AN ACT** to amend and reenact sections twenty-five, twenty-six and twenty-seven, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to municipal policemen's and

firemen's pension and relief funds generally; providing for additional benefit credit for members who have served in the armed forces; increasing the minimum amount of benefits payable to retirees; and increasing the minimum amount of death benefits payable to dependent spouses.

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

That sections twenty-five, twenty-six and twenty-seven, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, 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.**

§8-22-25. Retirement pensions.

§8-22-26. Death benefits.

§8-22-27. General provisions concerning disability pensions, retirement pensions and death benefits.

**§8-22-25. Retirement pensions.**

1 (a) Any member of a paid police or fire department who  
2 is entitled to a retirement pension hereunder, and who has  
3 been in the honorable service of such department for twenty  
4 years, may, upon written application to the board of  
5 trustees, be retired from all service in such department  
6 without medical examination or disability; and on such  
7 retirement the board of trustees shall authorize the  
8 payment of annual retirement pension benefits  
9 commencing upon his retirement or upon his attaining the  
10 age of fifty years, whichever is later, payable in twelve  
11 monthly installments for each year of the remainder of his  
12 life, in an amount equal to sixty percent of such member's  
13 average annual salary or compensation received during the  
14 three twelve-consecutive-month periods, not necessarily  
15 consecutive, each of such three periods beginning with the  
16 same calendar month of different years and all such three  
17 periods falling within the member's final five years of  
18 employment with such department, in which such member  
19 received his highest salary or compensation while a member



20 of the department, or an amount of two hundred dollars per  
21 month, whichever shall be greater.

22 (b) Any member of any such department who is entitled  
23 to a retirement pension under the provisions of subsection  
24 (a) of this section and who has been in the honorable service  
25 of such department for more than twenty years at the time  
26 of his retirement, as herein provided, shall, in addition to  
27 the sixty percent authorized in said subsection (a), receive  
28 one additional percent, to be added to the sixty percent, per  
29 each year served in excess of twenty years up to a maximum  
30 of ten additional percent.

31 (c) Any member of any such department whose service  
32 has been interrupted by duty with the armed forces of the  
33 United States as provided in section twenty-seven of this  
34 article prior to the first day of July, one thousand nine  
35 hundred eighty-one, shall be eligible for retirement pension  
36 benefits immediately upon retirement, regardless of his age,  
37 if he shall otherwise be eligible for such retirement pension  
38 benefits.

39 Any member of any such department who has served in  
40 active duty with the armed forces of the United States as  
41 described in section twenty-seven of this article, whether  
42 prior to or subsequent to becoming a member of a paid  
43 police or fire department covered by the provisions of this  
44 article, shall receive, in addition to the sixty percent  
45 authorized in subsection (a) of this section and the  
46 additional percent credit authorized in subsection (b) of  
47 this section, one additional percent per each year so served  
48 in active military duty, up to a maximum of four additional  
49 percent. In no event, however, may the total benefit granted  
50 to any member exceed seventy-five percent of the member's  
51 annual average salary calculated in accordance with  
52 subsection (a) of this section.

53 (d) Any member of a paid police or fire department shall  
54 be retired at the age of sixty-five years in the manner  
55 provided in this subsection. When a member of the paid  
56 police or fire department shall have reached the age of  
57 sixty-five years, the said board of trustees shall notify the  
58 mayor of this fact, within thirty days of such member's

59 sixty-fifth birthday; and the mayor shall cause such sixty-  
60 five-year-old member of the paid police or fire department  
61 to be retired within a period of not more than thirty  
62 additional days. Upon retirement under the provisions of  
63 this subsection, such member shall receive retirement  
64 pension benefits payable in twelve monthly installments for  
65 each year of the remainder of his life, in an amount equal to  
66 sixty percent of such member's average annual salary or  
67 compensation received during the three twelve-  
68 consecutive-month periods, not necessarily consecutive,  
69 each of such three periods beginning with the same  
70 calendar month of different years and all such three periods  
71 falling within the member's final five years of employment  
72 with such department, in which such member received his  
73 highest salary or compensation while a member of the  
74 department, or an amount of three hundred dollars per  
75 month, whichever is greater. If such member has been  
76 employed in said department for more than twenty years,  
77 the provisions of subsection (b) of this section shall apply.

78 (e) It shall be the duty of each member of a paid police or  
79 fire department at the time a fund is hereafter established to  
80 furnish the necessary proof of his date of birth to the said  
81 board of trustees, as specified in section twenty-three of  
82 this article, within a reasonable length of time, said length  
83 of time to be determined by the said board of trustees; and  
84 then the board of trustees and the mayor shall proceed to act  
85 in the manner provided in subsection (d) of this section and  
86 shall cause all members of the paid police or fire  
87 department who are over the age of sixty-five years to be  
88 retired in not less than sixty days from the date the fund is  
89 established. Upon retirement under the provisions of this  
90 subsection, such member, whether he has been employed  
91 in said department for twenty years or not, shall receive  
92 retirement pension benefits payable in twelve monthly  
93 installments for each year of the remainder of his life, in an  
94 amount equal to sixty percent of such member's average  
95 annual salary or compensation received during the three  
96 twelve-consecutive-month periods, not necessarily  
97 consecutive, each of such three periods beginning with the  
98 same calendar month of different years and all such three  
99 periods falling within the member's final five years of

100 employment with such department, in which such member  
101 received his highest salary or compensation while a member  
102 of the department, or an amount of two hundred dollars per  
103 month, whichever shall be greater. If such member has been  
104 employed in said department for more than twenty years,  
105 the provisions of subsection (b) of this section shall apply.

**§8-22-26. Death benefits.**

1 (a) In case:

2 (1) Any member of a paid police or fire department who  
3 has been in continuous service for more than five years dies  
4 from any cause other than as specified in subsection (b) of  
5 this section before retirement on a disability pension under  
6 the provisions of, prior to the first day of July, one thousand  
7 nine hundred eighty-one, section twenty-four of this article  
8 or, after the thirtieth day of June, one thousand nine  
9 hundred eighty-one, sections twenty-three-a and twenty-  
10 four of this article or a retirement pension under the  
11 provisions of subsection (a) or both subsections (a) and (b),  
12 section twenty-five of this article, leaving in either case  
13 surviving a dependent spouse, or any dependent child or  
14 children under the age of eighteen years, or dependent  
15 father or mother or both, or any dependent brothers or  
16 sisters or both under the age of eighteen years; or

17 (2) Any former member of any such department who is  
18 on a disability pension prior to the first day of July, one  
19 thousand nine hundred eighty-one, under section twenty-  
20 four of this article, or after the thirtieth day of June, one  
21 thousand nine hundred eighty-one, under sections twenty-  
22 three-a and twenty-four of this article, or is receiving or is  
23 entitled to receive retirement pension benefits under the  
24 provisions of subsection (a) or both subsections (a) and (b),  
25 section twenty-five of this article, shall die from any cause  
26 other than as specified in subsection (b) of this section  
27 leaving in either case surviving a dependent spouse to  
28 whom the marriage took place prior to the date of such  
29 member's retirement on a disability pension or a retirement  
30 pension, or any dependent child or children under the age of  
31 eighteen years who were born prior to or within ten months  
32 after the date of such member's retirement on a disability

33 pension or a retirement pension, or dependent father or  
34 mother or both, or any dependent brothers or sisters or both  
35 under the age of eighteen years; then in any of the cases set  
36 forth above in (1) and (2) the board of trustees of such  
37 pension and relief fund shall, immediately following the  
38 death of such member, pay to or for each of such entitled  
39 surviving dependents the following pension benefits viz.:  
40 To such dependent spouse, until death or remarriage, a sum  
41 per month equal to thirty percent of such member's average  
42 monthly salary or compensation received during the three  
43 twelve-consecutive-month periods, not necessarily  
44 consecutive, each of such three periods beginning with the  
45 same calendar month of different years and all such three  
46 periods falling within the member's final five years of  
47 employment with such department, in which such member  
48 received his highest salary or compensation while a member  
49 of the department, hereinafter referred to in this section as  
50 "monthly average," or an amount of two hundred dollars  
51 per month, whichever is greater. To each such dependent  
52 child a sum per month equal to ten percent of such monthly  
53 average, or the sum of thirty dollars per month for each such  
54 child, whichever shall be greater, until such child shall  
55 attain the age of eighteen years or marry, whichever first  
56 occurs; to each such dependent orphaned child a sum per  
57 month equal to fifteen percent of such monthly average, or  
58 the sum of forty-five dollars per month for each such child,  
59 whichever shall be greater, until such child shall attain the  
60 age of eighteen years or marry, whichever first occurs; to  
61 each such dependent father or mother a sum per month for  
62 each equal to ten percent of such monthly average, or the  
63 sum of thirty dollars per month for each such father and  
64 mother, whichever shall be greater; to each such dependent  
65 brother or sister the sum of five dollars per month until such  
66 individual shall attain the age of eighteen years or marry,  
67 whichever first occurs, but in no event shall the aggregate  
68 amount paid to such brothers and sisters exceed thirty  
69 dollars per month; but if at any time, because of the number  
70 of dependents, all such dependents cannot be paid in full as  
71 herein provided, then each dependent shall receive his pro  
72 rata share of such payments: *Provided*, That in no case shall  
73 the payments to the surviving spouse and children be cut

74 below sixty-five percent of the total amount to be paid to all  
75 dependents.

76 (b) The dependent spouse, child or children, or  
77 dependent father or mother, or dependent brothers or  
78 sisters, of any such member who shall die by reason of  
79 service rendered in the performance of such member's  
80 duties shall, regardless of the length of such member's  
81 service and irrespective of whether such member was or  
82 was not entitled to receive or was or was not receiving  
83 disability pension or temporary disability payments at the  
84 time of his death, receive the death benefits provided for in  
85 subsection (a) of this section, and if such member had less  
86 than three years' service at the time of his death, the  
87 monthly average shall be computed on the basis of the  
88 actual number of years of service.

89 (c) If a member dies without leaving a dependent  
90 spouse, child or children, or dependent father or mother, or  
91 dependent brothers or sisters, his contributions to the fund  
92 plus six percent interest shall be refunded to his named  
93 beneficiary or, if no beneficiary has been named, to his  
94 estate to the extent that such contributions plus interest  
95 exceed any disability or retirement benefits that he may  
96 have received before his death.

97 (d) The provisions of this section shall not be construed  
98 as creating or establishing any contractual or vested rights  
99 in favor of any individual who may be or become qualified  
100 as a beneficiary of the death benefits herein authorized to  
101 be made, all the provisions hereof and benefits provided for  
102 hereunder being expressly subject to such subsequent  
103 legislative enactments as may provide for any change,  
104 modification or elimination of the beneficiaries or benefits  
105 specified herein.

**§8-22-27. General provisions concerning disability pensions,  
retirement pensions and death benefits.**

1 (a) In determining the years of service of a member in a  
2 paid police or fire department for the purpose of  
3 ascertaining certain disability pension benefits, all  
4 retirement pension benefits and certain death benefits, the  
5 following provisions shall be applicable:

6 (1) Absence from the service because of sickness or  
7 injury for a period of two years or less shall not be construed  
8 as time out of service; and

9 (2) Any member of any paid police or fire department  
10 covered by the provisions of sections sixteen through  
11 twenty-eight of this article who has been required to or  
12 shall at any future time be required to enter the armed  
13 forces of the United States by conscription, by reason of  
14 being a member of some reserve unit of the armed forces or a  
15 member of the West Virginia national guard or air national  
16 guard, whose reserve unit or guard unit is called into active  
17 duty for one year or more, or who enlists in one of the armed  
18 forces of the United States during hostilities, and who upon  
19 receipt of an honorable discharge from such armed forces  
20 presents himself for resumption of duty to his appointing  
21 municipal official within six months from his date of  
22 discharge, and is accepted by the pension board's board of  
23 medical examiners as being mentally and physically  
24 capable of performing his required duties as a member of  
25 such paid police or fire department, shall be given credit for  
26 continuous service in said paid police or fire department,  
27 and his rights shall be governed as herein provided. No  
28 member of a paid police or fire department shall be required  
29 to pay the monthly assessment as now required by law,  
30 during his period of service in the armed forces of the  
31 United States.

32 (b) As to any former member of a paid police or fire  
33 department receiving disability pension benefits or  
34 retirement pension benefits from a policemen's or firemen's  
35 pension and relief fund, on the effective date of this article,  
36 the following provisions shall govern and control the  
37 amount of such pension benefits:

38 (1) A former member who on June thirtieth, one  
39 thousand nine hundred sixty-two, was receiving disability  
40 pension benefits or retirement pension benefits from a  
41 policemen's or firemen's pension and relief fund, shall  
42 continue to receive pension benefits, but on and after July  
43 one, one thousand nine hundred seventy-one, such pension  
44 benefits shall be in the amount of two hundred dollars per  
45 month; and

46 (2) A former member who became entitled to disability  
47 pension benefits or retirement pension benefits on or after  
48 July one, one thousand nine hundred sixty-two, shall  
49 continue to receive pension benefits, but on and after July  
50 one, one thousand nine hundred seventy-one, shall receive  
51 the disability pension benefits or retirement pension benefits  
52 provided for in section twenty-four or section twenty-five  
53 of this article, as the case may be.

54 (c) As to any dependent spouse, child or children, or  
55 dependent father or mother, or dependent brothers or  
56 sisters, of any former member of a paid police or fire  
57 department, receiving any death benefits from a  
58 policemen's pension and relief fund or firemen's pension  
59 and relief fund, on the effective date of this article, the  
60 following provisions shall govern and control the amount of  
61 such death benefits:

62 (1) A dependent spouse, child or children, or dependent  
63 father or mother, or dependent brothers or sisters, of any  
64 former member, who on June thirty, one thousand nine  
65 hundred sixty-two, was receiving any death benefits from a  
66 policemen's pension and relief fund or firemen's pension  
67 and relief fund, shall continue to receive death benefits, but  
68 on and after July one, one thousand nine hundred seventy-  
69 one, such death benefits shall be in the following amounts:  
70 To a dependent spouse, until death or remarriage, the sum  
71 of two hundred dollars per month, to each dependent child  
72 the sum of thirty dollars per month, until such child shall  
73 attain the age of eighteen years or marry, whichever first  
74 occurs; to each dependent orphaned child the sum of forty-  
75 five dollars per month, until such child shall attain the age  
76 of eighteen years or marry, whichever first occurs; to each  
77 dependent father and mother the sum of thirty dollars per  
78 month for each; to each dependent brother or sister the sum  
79 of five dollars per month, until such individual shall attain  
80 the age of eighteen years or marry, whichever first occurs,  
81 but in no event shall the aggregate amount paid to such  
82 brothers and sisters exceed thirty dollars per month; but if  
83 at any time, because of the number of dependents, all such  
84 dependents cannot be paid in full as herein provided, then  
85 each dependent shall receive his pro rata share of such  
86 payments: *Provided*, That in no case shall the payments to

87 the surviving spouse and children be cut below sixty-five  
88 percent of the total amount to be paid to all dependents;

89 (2) A dependent spouse, child or children, or dependent  
90 father or mother, or dependent brothers or sisters, of any  
91 former member, who became eligible for death benefits on  
92 or after July one, one thousand nine hundred sixty-two,  
93 shall continue to receive death benefits, but on and after  
94 July one, one thousand nine hundred seventy-one, shall  
95 receive the death benefits provided for in section twenty-  
96 six of this article.

97 (d) A former member who is receiving disability pension  
98 benefits on the thirtieth day of June, one thousand nine  
99 hundred eighty-one, shall continue to receive disability  
100 pension benefits provided for in section twenty-four of this  
101 article.

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## CHAPTER 130

(H. B. 1721—By Delegate Albright and Delegate Feinberg)

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[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section fifty, article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the preexisting use of land for certain purposes when prohibited under zoning rules and regulations; removing the distinction between farm, industrial or manufacturing land inside or outside urban areas with regard to making improvements to the land for continuance of a preexisting use and with regard to when abandonment of a preexisting use occurs.

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

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



**ARTICLE 24. PLANNING AND ZONING.****§8-24-50. Existing uses safeguarded.**

1 Such zoning ordinance or ordinances shall not prohibit  
2 the continuance of the use of any land, building or structure  
3 for the purpose for which such land, building or structure  
4 is used at the time such ordinance or ordinances take effect,  
5 but any alteration or addition to any land or any altera-  
6 tion, addition or replacement of or to any existing building  
7 or structure for the purpose of carrying on any use prohibited  
8 under the zoning rules and regulations applicable to the district  
9 may be prohibited: *Provided*, That no such prohibition shall  
10 apply to alterations or additions to or replacement of buildings  
11 or structures by any farm, industry or manufacturer, or to  
12 the use of land presently owned by any farm, industry or  
13 manufacturer but not used for agricultural, industrial or  
14 manufacturing purposes, or to the use or acquisition of addi-  
15 tional land which may be required for the protection, con-  
16 tinuing development or expansion of any agricultural, in-  
17 dustrial or manufacturing operation or any present or future  
18 satellite agricultural, industrial or manufacturing use. If a  
19 nonconforming use has been abandoned, any future use of  
20 such land, building or structure shall be in conformity with the  
21 provisions of the ordinance regulating the use in the district  
22 in which such land, building or structure may be located:  
23 *Provided, however*, That abandonment of any particular agri-  
24 cultural, industrial or manufacturing process, shall not be  
25 construed as abandonment of agricultural, industrial or manu-  
26 facturing use.

27 Nothing contained in this article shall be deemed to authorize  
28 an ordinance, rule and regulation which would prevent, outside  
29 of urban areas, the complete use and alienation of any timber  
30 and any and all minerals, including coal, oil and gas, by the  
31 owner or alienee thereof. For the purpose of this section,  
32 urban area shall include all lands or lots within the jurisdiction  
33 of a municipal planning commission as defined in this article.

**CHAPTER 131****(S. B. 727—By Senator Loehr)**

[Passed March 8, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article thirty-three, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers of building commissions.

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

That section four, article thirty-three, 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 33. INTERGOVERNMENTAL RELATIONS — BUILDING COMMISSIONS.**

**PART II. POWERS OF COMMISSIONS.**

**§8-33-4. Powers.**

- 1 Each commission shall have plenary power and author-  
2 ity to:
- 3 (a) Sue and be sued;
- 4 (b) Contract and be contracted with;
- 5 (c) Adopt, use and alter a common seal;
- 6 (d) Make and adopt all necessary, appropriate and  
7 lawful bylaws and rules and regulations pertaining to its  
8 affairs;
- 9 (e) Elect such officers, appoint such committees and  
10 agents and employ and fix the compensation of such  
11 employees and contractors as may be necessary for the  
12 conduct of the affairs and operations of the commission;
- 13 (f) (1) Acquire, purchase, own and hold any property,  
14 real or personal, and (2) acquire, construct, equip, main-  
15 tain and operate public buildings, structures, projects  
16 and appurtenant facilities, of any type or types for which  
17 the governmental body or bodies creating such commis-

18 sion are permitted by law to expend public funds (all  
19 hereinafter in this article referred to as facilities);

20 (g) Apply for, receive and use grants-in-aid, donations  
21 and contributions from any source or sources, including,  
22 but not limited to, the United States of America, or any  
23 department or agency thereof, and accept and use be-  
24 quests, devises, gifts and donations from any source  
25 whatsoever;

26 (h) Sell, encumber or dispose of any property, real or  
27 personal;

28 (i) Issue negotiable bonds, notes, debentures or other  
29 evidences of indebtedness and provide for the rights of  
30 the holders thereof, incur any proper indebtedness and  
31 issue any obligations and give any security therefor  
32 which it may deem necessary or advisable in connection  
33 with exercising powers as provided herein;

34 (j) Raise funds by the issuance and sale of revenue  
35 bonds in the manner provided by the applicable provi-  
36 sions of sections seven, ten, twelve and sixteen, article  
37 sixteen of this chapter, without regard to the extent  
38 provided in section five of this article, to the limitations  
39 specified in said section twelve, article sixteen, it being  
40 hereby expressly provided that for the purpose of the  
41 issuance and sale of revenue bonds, each commission is  
42 a "governing body" as that term is used in said article  
43 sixteen only;

44 (k) Subject to such reasonable limitations and condi-  
45 tions as the governmental body or all of the governmen-  
46 tal bodies creating and establishing such building com-  
47 mission may prescribe by ordinance or by order, exercise  
48 the power of eminent domain in the manner provided in  
49 chapter fifty-four of this code for business corporations,  
50 for the purposes set forth in subdivision (f) of this sec-  
51 tion, which purposes are hereby declared public purposes  
52 for which private property may be taken or damaged;

53 (l) Lease its property or any part thereof, for public  
54 purposes, to such persons and upon such terms as the  
55 commission deems proper, but when any municipality or

56 county commission is a lessee under any such lease, such  
57 lease must contain a provision granting to such munici-  
58 pality or county commission the option to terminate such  
59 lease during any fiscal year covered thereby; and

60 (m) Do all things reasonable and necessary to carry  
61 out the foregoing powers.

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## CHAPTER 132

(H. B. 1063—By Delegate Wooton)

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[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section eight, article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to oaths of allegiance for enlistment in the national guard; and allowing such oaths to be taken before any commissioned armed forces officer.

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

That section eight, article one-b, 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 1B. NATIONAL GUARD.

#### §15-1B-8. Enlisted personnel—Generally.

1 (a) The qualification for enlistment and re-enlistment, the  
2 period of enlistment, re-enlistment and voluntary extension  
3 of enlistment, the period of service and the manner and form  
4 of transfer and discharge of enlisted personnel of the national  
5 guard shall be as prescribed by applicable federal law and  
6 regulations: *Provided*, That the governor may extend the  
7 period of any enlistment, re-enlistment, voluntary extension of  
8 enlistment and the period of service of enlisted personnel of  
9 the national guard for a period not exceeding the duration of  
10 an emergency declared by him pursuant to article one-c of  
11 this chapter.

12 (b) Any person who has been discharged under other than  
13 honorable conditions from the national guard of this or any  
14 other state or from any component of the armed forces of the  
15 United States and has not been restored to duty shall not be  
16 eligible for enlistment in the national guard.

17 (c) Every person enlisted for the national guard shall take  
18 an oath of allegiance to the state and the United States and  
19 shall sign an enlistment paper, which shall be forwarded to the  
20 adjutant general on such form as may be prescribed.

21 (d) The oath of allegiance referred to in subsection (c) of  
22 this section may be taken and signed before any commissioned  
23 officer of the armed forces of the United States.

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## CHAPTER 133

H. B. 1966—By Delegate Wooton and Delegate I. Damron)

[Passed March 8, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers of the adjutant general of the state generally and with respect to members of the national guard in attendance at institutions of higher education.

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

That section twenty-one, article one-b, 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 1B. NATIONAL GUARD.

#### §15-1B-21. Tuition and fees for guard members at institutions of higher education.

1 Any member of the national guard who is enrolled in a  
2 course of undergraduate study at and is attending any  
3 accredited college, university, business or trade school located

4 in West Virginia, may be entitled to payment of tuitions and  
5 fees at such college, university, business or trade school during  
6 the period of his service in the national guard: *Provided,*  
7 That the adjutant general may prescribe criteria of eligibility for  
8 payment of tuition and fees at such college, university, business  
9 or trade school: *Provided, however,* That such payment shall  
10 be contingent upon appropriations being made by the Legisla-  
11 ture for this express purpose.

12 The amount of such payment for members attending a  
13 state-supported school shall be determined by the adjutant  
14 general, and shall not exceed the actual amount of tuition  
15 and fees at such school. The amount of such payment for  
16 members attending a private school shall be determined by  
17 the adjutant general, but in no event shall exceed the highest  
18 amounts payable at any state-supported school.

19 The adjutant general is charged with the administration of  
20 tuition and fee payments under this section and shall pro-  
21 mulgate rules and regulations for the same.

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## CHAPTER 134

(Com. Sub. for S. B. 62—By Senator Cook, Senator Heck, Senator Chace  
and Senator Davis)

[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty, relating to the West Virginia natural death act; defining terms; providing for execution of a declaration; providing for revocation of the declaration; requiring physicians to confirm terminal condition; providing for chart identification; providing for determination of competency of and intent of declarant; granting immunity to physicians, licensed health care facilities and professional or employees for acts done in good faith in reliance upon the declaration; providing for transfer of the declarant; providing criminal penalties for violations; determining effect on insurance policies; and preserving existing rights.

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

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

**ARTICLE 30. WEST VIRGINIA NATURAL DEATH ACT.**

- § 16-30-1. Short title.
- § 16-30-2. Definitions.
- § 16-30-3. Executing a declaration.
- § 16-30-4. Revocation.
- § 16-30-5. Physician's duty to confirm terminal condition; chart identification.
- § 16-30-6. Competency and intent of declarant.
- § 16-30-7. Liability and protection of declaration; penalties.
- § 16-30-8. Insurance.
- § 16-30-9. Preservation of existing rights.
- § 16-30-10. Prohibition.

**§16-30-1. Short title.**

- 1 This article shall be known as and may be cited as the
- 2 "West Virginia Natural Death Act."

**§16-30-2. Definitions.**

- 1 For the purposes of this article, the terms:
- 2 (1) "Attending physician" means the physician selected
- 3 by, or assigned to, the patient who has primary
- 4 responsibility for the treatment and care of the patient;
- 5 (2) "Declaration" means a witnessed document in
- 6 writing, voluntarily executed by the declarant in
- 7 accordance with the requirements of section three of this
- 8 article;
- 9 (3) "Life-sustaining procedure" means any medical
- 10 procedure or intervention which, when applied to a
- 11 qualified patient, would serve only to artificially prolong
- 12 the dying process and where, in the judgment of the
- 13 attending physician and a second physician, death will
- 14 occur whether or not such procedure or intervention is
- 15 utilized. The term "life-sustaining procedure" does not
- 16 include the administration of medication or the
- 17 performance of any medical procedure deemed necessary to
- 18 provide comfort, care or to alleviate pain;

19 (4) "Physician" means a person authorized to practice  
20 medicine in the state of West Virginia;

21 (5) "Qualified patient" means a patient who has  
22 executed a declaration in accordance with this article and  
23 who has been diagnosed and certified in writing to be  
24 afflicted with a terminal condition by two physicians who  
25 have personally examined the patient, one of whom is the  
26 attending physician: *Provided*, That if there be more than  
27 one attending physician, all such attending physicians must  
28 certify in writing that the patient is afflicted with a  
29 terminal condition; and

30 (6) "Terminal condition" means an incurable condition  
31 caused by injury, disease or illness, which, regardless of the  
32 application of life-sustaining procedures, would, within  
33 reasonable medical judgment, cause natural death and  
34 where the application of life-sustaining procedures serves  
35 only to postpone the moment of death.

### §16-30-3. Executing a declaration.

1 (a) Any person eighteen years of age or older may  
2 execute a declaration directing the withholding or  
3 withdrawal of life-sustaining procedures from themselves  
4 should they be in a terminal condition. The declaration  
5 made pursuant to this article shall be: (1) In writing; (2)  
6 signed by the person making the declaration or by another  
7 person in the declarant's presence at the declarant's express  
8 direction; (3) dated; (4) signed in the presence of two or  
9 more witnesses at least eighteen years of age; and (5) signed  
10 and attested by such witnesses whose signatures and  
11 attestations shall be notarized.

12 (b) In addition, a witness may not be:

13 (1) The person who signed the declaration on behalf of  
14 and at the direction of the declarant;

15 (2) Related to the declarant by blood or marriage;

16 (3) Entitled to any portion of the estate of the declarant  
17 according to the laws of intestate succession of the state of  
18 West Virginia or under any will of the declarant or codicil  
19 thereto: *Provided*, That the validity of the declaration shall



20 not be affected when a witness at the time of witnessing  
21 such declaration was unaware that he was a named  
22 beneficiary of the declarant's will;

23 (4) Directly financially responsible for declarant's  
24 medical care; or

25 (5) The attending physician, an employee of the  
26 attending physician or an employee of the health facility in  
27 which the declarant is a patient.

28 (c) It shall be the responsibility of the declarant to  
29 provide for notification to his or her attending physician of  
30 the existence of the declaration. An attending physician,  
31 when presented with the declaration, shall make the  
32 declaration or a copy of the declaration a part of the  
33 declarant's medical records.

34 (d) The declaration shall be substantially in the  
35 following form, but in addition may include other specific  
36 directions not inconsistent with other provisions of this  
37 article. Should any of the other specific directions be held to  
38 be invalid, such invalidity shall not affect other directions  
39 of the declaration which can be given effect without the  
40 invalid direction and to this end the directions in the  
41 declaration are severable.

42 "DECLARATION

43 "Declaration made this ..... day of .....  
44 (month, year). I, ....., being of  
45 sound mind, willfully and voluntarily make known my  
46 desires that my dying shall not be artificially prolonged  
47 under the circumstances set forth below, do declare:

48 "If at any time I should have an incurable injury, disease  
49 or illness certified to be a terminal condition by two  
50 physicians who have personally examined me, one of whom  
51 is my attending physician, and the physicians have  
52 determined that my death will occur whether or not life-  
53 sustaining procedures are utilized and where the  
54 application of life-sustaining procedures would serve only  
55 to artificially prolong the dying process, I direct that such  
56 procedures be withheld or withdrawn, and that I be  
57 permitted to die naturally with only the administration of

58 nutrition, medication or the performance of any medical  
59 procedure deemed necessary to provide me with comfort,  
60 care or to alleviate pain.

61 "In the absence of my ability to give directions regarding  
62 the use of such life-sustaining procedures, it is my intention  
63 that this declaration be honored by my family and  
64 physician(s) as the final expression of my legal right to  
65 refuse medical or surgical treatment and accept the  
66 consequences resulting from such refusal.

67 "I understand the full import of this declaration and I am  
68 emotionally and mentally competent to make this  
69 declaration.

70 "Signed .....  
71 "Address .....  
72 .....

73 "I did not sign the declarant's signature above for or at  
74 the direction of the declarant. I am at least eighteen years of  
75 age and am not related to the declarant by blood or  
76 marriage, entitled to any portion of the estate of the  
77 declarant according to the laws of intestate succession of  
78 the state of West Virginia or to the best of my knowledge  
79 under any will of declarant or codicil thereto, or directly  
80 financially responsible for declarant's medical care. I am  
81 not the declarant's attending physician, an employee of the  
82 attending physician, nor an employee of the health facility  
83 in which the declarant is a patient.

84 "Witness .....  
85 "Witness .....  
86 "STATE OF .....,  
87 "COUNTY OF ....., to wit:

88 "This day personally appeared before me, the  
89 undersigned authority, a Notary Public in and for .....  
90 County, .....(State), .....(witness) and  
91 .....(witness) who, being first duly sworn, say that  
92 they are the subscribing witnesses to the declaration of  
93 .....(declarant), which declaration is dated the  
94 ..... day of ....., 19....;  
95 and that on the said date the said .....(declarant),  
96 the declarant, signed, sealed, published and declared the

97 same as and for his declaration, in the presence of both these  
 98 affiants; and that these affiants, at the request of said  
 99 declarant, in the presence of each other, and in the presence  
 100 of said declarant, all present at the same time, signed their  
 101 names as attesting witnesses to said declaration.

102 "Affiants further say that this affidavit is made at the  
 103 request of .....(declarant), declarant, and in his  
 104 presence, and that .....(declarant), at the time the  
 105 declaration was executed, was in the opinion of affiants, of  
 106 sound mind and memory, and over the age of eighteen  
 107 years.

108 .....  
 109 .....

110 "Taken, subscribed and sworn to before me by  
 111 .....(witness) and .....(witness) this  
 112 ..... day of ....., 19.....

113 "My commission expires:  
 114 " .....  
 115 Notary Public."

**§16-30-4. Revocation.**

1 (a) A declaration may be revoked at any time only by the  
 2 declarant or at the express direction of the declarant,  
 3 without regard to the declarant's mental state by any of the  
 4 following methods:

5 (1) By being destroyed by the declarant or by some  
 6 person in the declarant's presence and at his direction;

7 (2) By a written revocation of the declaration signed and  
 8 dated by the declarant or person acting at the direction of  
 9 the declarant. Such revocation shall become effective only  
 10 upon communication of the revocation to the attending  
 11 physician by the declarant or by a person acting on behalf of  
 12 the declarant. The attending physician shall record in the  
 13 patient's medical record the time and date when he or she  
 14 receives notification of the written revocation; or

15 (3) By a verbal expression of the intent to revoke the  
 16 declaration in the presence of a witness eighteen years of  
 17 age or older who signs and dates a writing confirming that

18 such expression of intent was made. Any verbal revocation  
19 shall become effective only upon communication of the  
20 revocation to the attending physician by the declarant or by  
21 a person acting on behalf of the declarant. The attending  
22 physician shall record, in the patient's medical record, the  
23 time, date and place of when he or she receives notification  
24 of the revocation.

25 (b) There is no criminal or civil liability on the part of  
26 any person for failure to act upon a revocation made  
27 pursuant to this section unless that person has actual  
28 knowledge of the revocation.

**§16-30-5. Physician's duty to confirm terminal condition;  
chart identification.**

1 (a) An attending physician who has been notified of the  
2 existence of a declaration executed under this article,  
3 without delay after the diagnosis of a terminal condition of  
4 the declarant, shall take the necessary steps to provide for  
5 written certification and confirmation of the declarant's  
6 terminal condition so that the declarant may be deemed to  
7 be a qualified patient under this article.

8 (b) Once written certification and confirmation of the  
9 declarant's terminal condition is made, a person becomes a  
10 qualified patient under this article only if the attending  
11 physician verbally or in writing informs the patient of his or  
12 her terminal condition and documents such communication  
13 in the patient's medical record. If the patient is diagnosed as  
14 unable to comprehend verbal or written communications,  
15 such patient becomes a qualified patient as defined in  
16 section two of this article, immediately upon written  
17 certification and confirmation of his terminal condition by  
18 the attending physician.

19 (c) All inpatient health care facilities shall develop a  
20 system to visibly identify a qualified patient's chart which  
21 contains a declaration as set forth in this article.

**§16-30-6. Competency and intent of declarant.**

1 (a) The desires of a qualified patient at all times  
2 supersede the effect of the declaration.

3 (b) If the qualified patient is incompetent at the time of  
4 the decision to withhold or withdraw life-sustaining  
5 procedures, a declaration executed in accordance with  
6 section three of this article is presumed to be valid. For the  
7 purposes of this article, a physician or health facility may  
8 presume in the absence of actual notice to the contrary that  
9 an individual who executed a declaration was of sound  
10 mind when it was executed. The fact that an individual  
11 executed a declaration is not an indication of a declarant's  
12 mental incompetency.

**§16-30-7. Liability and protection of declaration; penalties.**

1 (a) No physician, licensed health care professional,  
2 health facility or employee thereof who in good faith and  
3 pursuant to reasonable medical standards causes or  
4 participates in the withholding or withdrawing of life-  
5 sustaining procedures from a qualified patient pursuant to  
6 a declaration made in accordance with this article may, as a  
7 result thereof, be subject to criminal or civil liability.

8 (b) An attending physician who cannot comply with the  
9 declaration of a qualified patient pursuant to this article  
10 shall, in conjunction with the next of kin of the patient or  
11 other responsible individual, effect the transfer of the  
12 qualified patient to another physician who will honor the  
13 declaration of the qualified patient. Transfer under these  
14 circumstances does not constitute abandonment.

15 (c) Any person who willfully conceals, cancels, defaces,  
16 obliterates or damages the declaration of another without  
17 the declarant's consent or who falsifies or forges a  
18 revocation of the declaration of another is guilty of a felony,  
19 and, upon conviction thereof, shall be fined an amount not  
20 to exceed five thousand dollars or be imprisoned in the  
21 penitentiary for a period not to exceed three years, or both  
22 fined and imprisoned.

23 (d) Any person who falsifies or forges the declaration of  
24 another or willfully conceals or withholds personal  
25 knowledge of the revocation of a declaration with the intent  
26 to cause a withholding or withdrawal of life-sustaining  
27 procedures, contrary to the wishes of the declarant and,  
28 thereby, because of such act, directly causes life-sustaining

29 procedures to be withheld or withdrawn and death to be  
30 hastened is guilty of a felony, and, upon conviction thereof,  
31 shall be imprisoned in the penitentiary not less than one nor  
32 more than five years.

**§16-30-8. Insurance.**

1 (a) The withholding or withdrawal of life-sustaining  
2 procedures from a qualified patient in accordance with the  
3 provisions of this article does not, for any purpose,  
4 constitute a suicide and does not constitute the crime of  
5 assisting suicide.

6 (b) The making of a declaration pursuant to section  
7 three of this article does not affect in any manner the sale,  
8 procurement or issuance of any policy of life insurance, nor  
9 does it modify the terms of an existing policy of life  
10 insurance. No policy of life insurance may be legally  
11 impaired or invalidated in any manner by the withholding  
12 or withdrawal of life-sustaining procedures from an  
13 insured qualified patient, notwithstanding any term of the  
14 policy to the contrary.

15 (c) No physician, health facility or other health care  
16 provider and no health care service plan, health  
17 maintenance organization, insurer issuing disability  
18 insurance, self-insured employee welfare benefit plan,  
19 nonprofit medical service corporation or mutual nonprofit  
20 hospital service corporation may require any person to  
21 execute a declaration as a condition for being insured for or  
22 receiving health care services.

**§16-30-9. Preservation of existing rights.**

1 (a) Nothing in this article impairs or supersedes any  
2 legal right or legal responsibility which any person may  
3 have to effect the withholding or withdrawal of life-  
4 sustaining procedures in any lawful manner. In such  
5 respect the provisions of this article are cumulative.

6 (b) This article creates no presumption concerning the  
7 intention of an individual who has not executed a  
8 declaration to consent to the use of withholding of life-  
9 sustaining procedures in the event of a terminal condition.

**§16-30-10. Prohibition.**

- 1 Nothing in this article may be construed to condone,
- 2 authorize or approve mercy killing or to permit any
- 3 affirmative or deliberate act or omission to end a human life
- 4 other than to permit the natural process of dying as
- 5 provided in this article.

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## CHAPTER 135

(Com. Sub. for H. B. 1212—By Delegate Murphy)

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[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a, relating to the authority of the director of the department of natural resources to lease land to county boards of education for outdoor education programs with the approval of the governor; multi-county agreements to establish joint programs; reversion upon determination of the director that the land has ceased to be used for outdoor education purposes; judicial review of such determinations by the director.

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

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

**ARTICLE 1. ORGANIZATION AND ADMINISTRATION.****§20-1-10a. Authority to convey land to county board of education for educational purposes.**

- 1 To further an appreciation and understanding of the out-
- 2 doors by the youth of this state, the director is hereby au-
- 3 thorized to enter into long-term agreements, with the written

4 approval of the governor, leasing unto the county board of  
5 education of any county wherein are situate lands belonging to  
6 the department of natural resources, for nominal consideration,  
7 one parcel of rural land not exceeding in size one acre for each  
8 five hundred students registered in the public schools of the  
9 county at the time of the lease. Such land shall be used by the  
10 county board of education exclusively to establish and main-  
11 tain an outdoor education program and for no other purpose.  
12 By a multi-county agreement, the county boards of education  
13 of any county or counties in which no land belonging to the  
14 department of natural resources is located may join with any  
15 other county or counties in which such land is located to  
16 establish and maintain a joint outdoor education program and  
17 the combined student enrollment of the counties joining into  
18 such an agreement shall determine the maximum acreage that  
19 may be leased by the department of natural resources for such  
20 purposes.

21 If the department of natural resources makes a finding  
22 that land leased pursuant to this section has ceased to be used  
23 for the purposes set forth herein for a period of three consecu-  
24 tive years, the director shall notify the affected county board  
25 or boards of education of such a finding in writing. Upon the  
26 expiration of sixty days from receipt of said notice, such  
27 lease shall become null and void and control of such leased  
28 land shall revert to the department of natural resources unless  
29 the affected board or boards of education have petitioned  
30 the circuit court of the county wherein the land or the greater  
31 portion thereof lies for review of the said finding.

32 Upon petition and hearing, the said circuit court shall  
33 determine whether the land has ceased to be used for the  
34 purposes set forth in this section. Periodic or incidental use  
35 of the land for less than six months of each calendar year  
36 shall not be sufficient to support a finding that the land has  
37 ceased to be used for the purposes set forth herein. If the said  
38 circuit court determines that the land has ceased to be used  
39 for the purposes set forth herein, the court shall, by written  
40 order, declare the lease null and void and reinstate control of  
41 the leased land in the department of natural resources.



## CHAPTER 136

(Com. Sub. for S. B. 245—By Senator Tucker)

[Passed March 8, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to repeal sections two, two-a, two-b, nine, ten and eleven, article four, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said code by adding thereto a new chapter, designated chapter twenty-nine-c, relating to the uniform notaries act; general provisions; short title; purposes and rules of construction; prospective effect of act; construction against implicit repeal; notary public notarization defined; severability; repeal; time of taking effect; appointment provisions; appointment; jurisdiction and term; local or district offices; powers; limitations on powers; exception for attorneys and their employees; duties; forms and procedures; acknowledgment forms; affirmation; procedure; form; executing witness form; certified facsimiles of documents; procedure; form; liability; fines and imprisonment; liability of notary and sureties; liability of employer of notary; proximate cause; revocation of commission; action for injunction; certificate of authority.

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

That sections two, two-a, two-b, nine, ten and eleven, article four, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated chapter twenty-nine-c, to read as follows:

### CHAPTER 29C. UNIFORM NOTARY ACT.

#### Article

1. General Provisions.
2. Appointment Provisions.
3. Powers.
4. Duties.
5. Forms and Procedures.
6. Liability, Fines and Imprisonment.
7. Revocation of Commission; Action for Injunction; Unauthorized Practice of Law.

**ARTICLE 1. GENERAL PROVISIONS.**

- §29C-1-101. Short title.  
§29C-1-102. Purposes and rules of construction.  
§29C-1-103. Prospective effect of act.  
§29C-1-104. Construction against implicit repeal.  
§29C-1-105. Notary public and nortarization defined.  
§29C-1-106. Effective date.

**§29C-1-101. Short title.**

- 1 This article shall be known and may be cited as the  
2 "uniform notary act."

**§29C-1-102. Purposes and rules of construction.**

- 1 (a) This article shall be construed and applied to  
2 promote its underlying purposes and policies.
- 3 (b) The underlying purposes and policies of this article  
4 are:
- 5 (1) To simplify, clarify and modernize the law governing  
6 notaries public;
- 7 (2) To make uniform notary laws among the states  
8 enacting it; and
- 9 (3) To promote, serve and protect the public interest.
- 10 (c) In this article, unless the context otherwise requires:
- 11 (1) Words in the singular number include the plural, and  
12 words in the plural number include the singular;
- 13 (2) Words of the masculine gender include the feminine  
14 and the neuter; and
- 15 (3) Words of the neuter gender may refer to any gender  
16 when the sense so indicates.

**§29C-1-103. Prospective effect of chapter.**

- 1 This article applies prospectively. Nothing in this article  
2 shall be construed to revoke any notary public commission  
3 existing on the effective date of this article. All renewals of  
4 notarial commissions shall be obtained in accordance with  
5 this article.

**§29C-1-104. Construction against implicit repeal.**

- 1 This article is intended to provide comprehensive and
- 2 unified coverage of the subject matter. Therefore, no part of
- 3 it shall be construed to be impliedly repealed or amended by
- 4 subsequent legislation if that construction can be avoided.

**§29C-1-105. Notary public and notarization defined.**

- 1 (a) The terms "notary public" or "notary" are used
- 2 interchangeably to mean any individual appointed and
- 3 commissioned to perform notarial acts.
- 4 (b) "Notarization" means the performance of a notarial
- 5 act.

**§29C-1-106. Effective date.**

- 1 This article shall take effect the first day of July, one
- 2 thousand nine hundred eighty-four.

**ARTICLE 2. APPOINTMENT PROVISIONS.****PART I. OFFICE PROVISIONS.**

- §29C-2-101. Appointment.  
§29C-2-102. Jurisdiction and term.

**PART II. QUALIFYING.**

- §29C-2-201. Application.  
§29C-2-202. Qualifying fee.  
§29C-2-203. Applicant's endorsers.  
§29C-2-204. Applicant's oath.  
§29C-2-205. Bond.  
§29C-2-206. Confidential application.  
§29C-2-207. Specimen official signature.  
§29C-2-208. Application by persons holding existing commissions.

**PART III. GOVERNMENT NOTARIES.**

- §29C-2-301. State and local government employees.

**PART I. OFFICE PROVISIONS.****§29C-2-101. Appointment.**

- 1 (a) Upon application under this article, the governor
- 2 may appoint and commission persons as a notary public in
- 3 this state.
- 4 (b) The governor may not appoint and commission as a

5 notary public any person who submits an application  
6 containing substantial and material misstatement or  
7 omission of fact.

8 (c) The secretary of state shall administer the article and  
9 may issue rules and regulations, in accordance with the  
10 provisions of chapter twenty-nine-a, to make the article  
11 effective.

**§29C-2-102. Jurisdiction and term.**

1 Notaries may perform notarial acts in any part of this  
2 state for a term of ten years, unless sooner removed.

PART II. QUALIFYING.

**§29C-2-201. Application.**

1 Every applicant for appointment and commission as a  
2 notary public shall complete an application to be filed with  
3 the secretary of state stating:

4 (a) That he is a citizen of the United States, or if he is not  
5 a citizen of the United States, that he is a citizen or national  
6 of a country that permits American citizens to become  
7 notaries public therein;

8 (b) If he is a citizen of the United States, that he is a  
9 qualified elector of a state at the time of his application;

10 (c) That he is able to read and write English;

11 (d) The address of his business or residence in this state;

12 (e) His social security number, if he has one; and

13 (f) That during the past ten years his commission as a  
14 notary public has not been revoked.

**§29C-2-202. Qualifying fee.**

1 Every applicant for appointment and commission as a  
2 notary public shall pay to the secretary of state a fee of  
3 fifty dollars.

**§29C-2-203. Applicant's endorsers.**

1 Every applicant for appointment and commission as a  
2 notary public shall submit to the secretary of state

3 endorsements from three qualified electors of this state, in  
4 the following form:

5 I, ..... (name of endorser), a  
6 qualified elector of this state, believe to the best of my  
7 knowledge, the applicant is a person of good moral  
8 character and integrity and capable of performing notarial  
9 acts.

10 .....  
11 (Endorser's signature and address)

**§29C-2-204. Applicant's oath.**

1 Every applicant for appointment and commission as a  
2 notary public shall take the following oath in the presence  
3 of a person qualified to administer an oath in this state:

4 I, ..... (name of applicant),  
5 solemnly swear or affirm, under the penalty of perjury, that  
6 the answers to all questions in this application are true,  
7 complete and correct; that I have carefully read the notaries  
8 public law of this State; and, if appointed and  
9 commissioned as a notary public, I will perform faithfully,  
10 to the best of my ability, all notarial acts in accordance with  
11 the law.

12 .....  
13 (Signature of applicant)

14 Subscribed and sworn or affirmed before me this .....  
15 day of ....., 19..... The undersigned notary public  
16 further certifies that ..... (name of  
17 applicant), is known to me to be the applicant and elector  
18 who executed the within application for appointment and  
19 commission as a notary public and acknowledged to me that  
20 he or she executed the same for the purposes therein stated.

21 .....  
22 (Official signature and official seal of notary)

**§29C-2-205. Bond.**

1 Every applicant for appointment and commission as a  
2 notary public shall submit to the secretary of state an  
3 executed bond commencing at least thirty days after the  
4 date the applicant mails his application to the secretary of  
5 state with a term of ten years, in the sum of five hundred

6 dollars, with, as surety thereon, a company qualified to  
7 write surety bonds in this state, or upon a personal surety,  
8 such surety bond shall be signed in the office of the county  
9 clerk of the county in which the notary or his surety resides:  
10 *Provided*, That the county clerk shall certify that the surety  
11 owns real property in that county of an assessed value of  
12 more than double the amount of the bond: *Provided*,  
13 *however*, That where the surety is not assessed with  
14 sufficient property in the county in which bond is being  
15 executed, justification of surety shall be required by the  
16 clerk. The bond shall be conditioned upon the faithful  
17 performance of all notarial acts in accordance with this  
18 article.

**§29C-2-206. Confidential application.**

1 Information in the application for appointment, except  
2 for the applicant's name and address, is confidential and  
3 may not be disclosed by an official or employee having  
4 access to it to any person other than the applicant, his  
5 authorized representative, or an employee or officer of the  
6 federal government, the state government or a local agency,  
7 acting in his official capacity. Such information shall be  
8 used by the governor and secretary of state for the sole  
9 purpose of performing his duties under this article.

**§29C-2-207. Specimen official signature.**

1 Every applicant for appointment and commission as a  
2 notary public shall mail or deliver to the secretary of state a  
3 handwritten specimen of his official signature which  
4 contains his surname and at least the initial of his first  
5 name. The fee payable to the secretary of state for recording  
6 a specimen of the official signature is two dollars.

**§29C-2-208. Application by persons holding existing commissions.**

1 Persons holding notary commissions on the effective date  
2 of this article and having been appointed pursuant to  
3 former section two, article four, chapter twenty-nine of this  
4 code, shall continue upon their bonds as previously posted  
5 until the expiration of their respective notarial  
6 commissions.

## PART III. GOVERNMENT NOTARIES.

**§29C-2-301. State and local government employees.**

1 (a) The governor may appoint and commission such  
2 number of state and local government employees as  
3 notaries public, to act for and in behalf of their respective  
4 state and local government offices, as he deems proper. An  
5 appointee commissioned as a notary public under this  
6 section may act only for and in behalf of the government  
7 office or offices in which he is employed.

8 (b) An appointee under this section shall meet the  
9 requirements for qualification and appointment prescribed  
10 in article two of this article except that the head of the state  
11 or local government office where the applicant is employed  
12 may execute a certificate that the application is made for  
13 the purposes of the office and in the public interest and  
14 submit it to the governor together with the application for  
15 appointment as a notary public, in which case the fee for  
16 appointment specified in article two, section two hundred  
17 two, is waived.

18 (c) Premium on the bond and costs of all other notary  
19 supplies for a commissioned state or local government  
20 employee shall be paid for from funds available to the office  
21 in which he is employed.

22 (d) All fees received for notarial services by a notary  
23 public appointed for and in behalf of a state or local  
24 government office shall be remitted by him to the state or  
25 local government office in which he is employed.

26 (e) A notary public who is an employee of a state or local  
27 government office in this state must comply with all  
28 provisions of this article.

**ARTICLE 3. POWERS.**

§29C-3-101. Powers.

§29C-3-102. Limitations on powers.

**§29C-3-101. Powers.**

1 Every notary public is empowered to:

2 (1) Take acknowledgments;

- 3 (2) Administer oaths and affirmations;  
 4 (3) Certify that a copy of a document is a true copy of  
 5 another document; and  
 6 (4) Perform any other act permitted by law.

**§29C-3-102. Limitations on powers.**

- 1 (a) A notary public who has a disqualifying interest, as  
 2 hereinafter defined, in a transaction may not legally  
 3 perform any notarial act in connection with the transaction.
- 4 (b) For the purposes of this article, a notary public has a  
 5 disqualifying interest in a transaction in connection with  
 6 which notarial services are requested if he:
- 7 (1) May receive directly, and as a proximate result of the  
 8 notarization, any advantage, right, title, interest, cash or  
 9 property, exceeding in value the sum of any fee properly  
 10 received in accordance with section three hundred one  
 11 article four of this chapter; or
- 12 (2) Is named, individually, as a party to the transaction.

**ARTICLE 4. DUTIES.**

**PART I. SEAL AND SIGNATURE.**

- §29C-4-101. Official signature.  
 §29C-4-102. Rubber stamp seal.  
 §29C-4-103. Seal embosser.  
 §29C-4-104. Illegibility.

**PART II. RECORD CHANGES.**

- §29C-4-201. Change of address.  
 §29C-4-202. Change of notary's name.  
 §29C-4-203. Lost official seal.

**PART III. FEES.**

- §29C-4-301. Maximum fees.

**PART IV. TERMINATION OF COMMISSION.**

- §29C-4-401. Death.  
 §29C-4-402. Resignation or removal.  
 §29C-4-403. Revocation of commission.  
 §29C-4-404. Failure to be reappointed.  
 §29C-4-405. Reappointment.



## PART I. SEAL AND SIGNATURE.

**§29C-4-101. Official signature.**

- 1 At the time of notarization a notary public shall sign his
- 2 official signature on every notarial certificate.

**§29C-4-102. Rubber stamp seal.**

- 1 Under or near his official signature on every notarial
- 2 certificate, a notary public shall rubber stamp clearly and
- 3 legibly, so that it is capable of photographic reproduction:
- 4 (a) The words "Official Seal";
- 5 (b) His name exactly as he writes his official signature;
- 6 (c) The words "Notary Public," "State of West Virginia"
- 7 and "My Commission expires (commission expiration
- 8 date)";
- 9 (d) The address of his business or residence in this state;
- 10 and
- 11 (e) A serrated or milled edge border in a rectangular
- 12 form not more than one inch in width by two and one-half
- 13 inches in length surrounding the information.

**§29C-4-103. Seal embosser.**

- 1 (a) Every notary public may provide, keep and use a seal
- 2 embosser engraved to show the words "Notary Seal," his
- 3 name, "Notary Public," and "State of West Virginia."
- 4 (b) The indentations made by the seal embosser shall
- 5 not be applied on the notarial certificate or document to be
- 6 notarized in a manner that will render illegible or incapable
- 7 of photographic reproduction any of the printed marks or
- 8 writing.

**§29C-4-104. Illegibility.**

- 1 The illegibility of any of the information required by
- 2 sections one hundred one through one hundred three,
- 3 article four, does not affect the validity of a transaction.

## PART II. RECORD CHANGES.

**§29C-4-201. Change of address.**

- 1 Every notary public shall mail or deliver notice to the

2 secretary of state within thirty days after he changes the  
3 address of his business or residence in this state. The fee  
4 payable to the secretary of state for recording notice of  
5 change of address is two dollars.

**§29C-4-202. Change of notary's name.**

1 Every notary public shall mail or deliver notice to the  
2 secretary of state within thirty days after he changes his  
3 name, including with the notification a specimen of his  
4 handwritten official signature which contains his surname  
5 and at least the initial of his first name. The fee payable to  
6 the secretary of state for recording notice of change of  
7 notary's name is two dollars.

**§29C-4-203. Lost official seal.**

1 Every notary public shall mail or deliver notice to the  
2 secretary of state within thirty days after he loses or  
3 misplaces his official seal. The fee payable to the secretary  
4 of state for recording notice of a lost seal is two dollars.

**PART III. FEES.**

**§29C-4-301. Maximum fees.**

1 The maximum fee in this state for notarization of each  
2 signature and the proper recordation thereof in the journal  
3 of notarial acts is two dollars for each signature notarized.

4 (a) The maximum fee in this state for certification of a  
5 facsimile of a document, retaining a facsimile in the  
6 notary's file, and the proper recordation thereof in the  
7 journal of notarial acts is two dollars for each eight and  
8 one-half by eleven inch page retained in the notary's file.

9 (b) The maximum fee in this state is two dollars for any  
10 other notarial act performed.

11 (c) A notary public who charges more than the  
12 maximum fees specified is guilty of official misconduct.

**PART IV. TERMINATION OF COMMISSION.**

**§29C-4-401. Death.**

1 If a notary public dies during the term of his appointment,  
2 his heirs or personal representative, as soon as reasonably

3 possible after the notary's death, shall send by certified  
4 mail or deliver to the secretary of state the deceased  
5 notary's papers and copies relating to his notarial acts. His  
6 heirs or personal representative shall destroy forthwith his  
7 official seal.

**§29C-4-402. Resignation or removal.**

1 If a notary public no longer desires to be a notary public  
2 or has ceased to have a business or residence address in this  
3 state, he shall send forthwith by certified mail or deliver to  
4 the secretary of state a letter of resignation and all papers  
5 and copies relating to his notarial acts. He shall destroy  
6 forthwith his official seal. His commission shall thereupon  
7 cease to be in effect.

**§29C-4-403. Revocation of commission.**

1 Immediately after receiving notice from the secretary of  
2 state that his commission has been revoked, the person  
3 whose commission is revoked shall forthwith send by  
4 certified mail or deliver to the secretary of state all papers  
5 and copies relating to his notarial acts. He shall destroy  
6 forthwith his official seal.

**§29C-4-404. Failure to be reappointed.**

1 A notary public who is not reappointed to act as a notary  
2 public within thirty days after the expiration of his  
3 commission shall send forthwith by certified mail or deliver  
4 to the secretary of state all papers and copies relating to his  
5 notarial acts. He shall destroy forthwith his official seal.

**§29C-4-405. Reappointment.**

1 (a) No person may be automatically reappointed as a  
2 notary public.

3 (b) Every notary public who is an applicant for  
4 reappointment as a notary public shall comply with the  
5 provisions of article two of this chapter.

**ARTICLE 5. FORMS AND PROCEDURES.**

§29C-5-101. Acknowledgment forms.

§29C-5-102. Oath; procedure; form.

§29C-5-103. Executing witness form.

§29C-5-104. Certified facsimiles of documents; procedure; form.

**§29C-5-101. Acknowledgment forms.**

1 (a) The forms of acknowledgment set forth in section  
 2 six, article one-a, chapter thirty-nine of this code, and  
 3 known as "statutory short forms of acknowledgment" may  
 4 be used and are sufficient for their respective purposes  
 5 under any law of this state, whether the acknowledgment  
 6 was taken within or without this state.

7 (b) Certificates of acknowledgment for the following  
 8 purposes may be substantially in the following respective  
 9 form:

10 (1) By a United States citizen who is outside of the  
 11 United States ..... (description or  
 12 location of place where acknowledgment is taken).

13 On this ..... day of ....., in the year .....,  
 14 before me ..... (name and title of person  
 15 acting as a notary and refer to law or authority granting  
 16 power to act as a notary), personally appear .....  
 17 ..... (name of citizen) known to me to be the  
 18 person who executed the within .....  
 19 (type of document) and acknowledged to me that .....  
 20 (he) executed the same for the purposes therein stated.

21 .....  
 22 (Official signature and official seal of person  
 23 acting as a notary and refer to law or  
 24 authority granting power to act as a notary)

25 (2) By an individual who cannot write his name,  
 26 State of ....., County of .....

27 On this ..... day of ....., in the year .....,  
 28 before me ..... (name of notary), a  
 29 notary public in and for said state, personally appeared  
 30 ..... (name of individual),  
 31 known to me to be the person who, being unable to write his  
 32 name, made his mark in my presence. I signed his name at  
 33 his request and in his presence on the within .....  
 34 (type of document) and he acknowledged to me and the two  
 35 witnesses who have signed and printed their names and

36 addresses hereto, that he made his mark on the same for the  
37 purposes therein stated.

38 .....

39 (Official signature and official seal of notary)

40 .....

41 .....

42 (Signatures of two witnesses and their addresses)

**§29C-5-102. Oath; procedure; form.**

1 (a) If the oath to be administered by the notary public is  
2 in writing and the person who took the oath has signed his  
3 name thereto, the notary public shall write or print under  
4 the text of the oath the following:

5 "Subscribed and sworn before me this ..... day of  
6 ....., 19....."

7 .....

8 (Official signature and official seal of notary)

9 (b) If the oath to be administered by the notary public is  
10 not in writing, the notary public shall address the affirmant  
11 substantially as follows:

12 You do solemnly swear, under the penalty of perjury, that  
13 the testimony you shall give in the matter in issue, pending  
14 between ..... and .....,  
15 shall be the truth, the whole truth, and nothing but the  
16 truth, so help you God?"

**§29C-5-103. Executing witness form.**

1 (a) "Executing witness" as used in this section means an  
2 individual who acts in the place of a notary.

3 (b) An executing witness may not be related by blood or  
4 marriage or have a disqualifying interest as defined in  
5 subsection (b), section one hundred two, article three of this  
6 chapter.

7 (c) The affidavit of executing witness for  
8 acknowledgment by an individual who does not appear  
9 before a notary shall be substantially in the following form:

10 I, ..... (name of executing witness),  
 11 do solemnly swear under the penalty of perjury, that  
 12 ..... (name of person who does not appear  
 13 before a notary), personally known to me, has executed the  
 14 within ..... (type of document) in my presence,  
 15 and has acknowledged to me that ..... (he) executed the  
 16 same for the purposes therein stated and requested that I  
 17 sign my name on the within document as an executing  
 18 witness.

19 .....  
 20 (Signature of executing witness)

21 Subscribed and sworn before me this ..... day of  
 22 ....., 19.....

23 .....  
 24 (Official signature and official seal of notary)

**§29C-5-104. Certified facsimiles of documents; procedure;  
 form.**

1 (a) A notary public may certify a facsimile of a  
 2 document if he receives a signed written request stating  
 3 that:

4 (1) A certified copy or facsimile of the document cannot  
 5 be obtained from the office of any recorder of public  
 6 documents or custodian of documents in this state; and

7 (2) The production of a facsimile, preparation of a copy  
 8 or certification of a copy of the document does not violate  
 9 any state or federal law.

10 (b) Every notary public shall retain a facsimile of each  
 11 document he has certified as a facsimile of another  
 12 document, together with other papers or copies relating to  
 13 his notarial acts.

14 (c) The certification of a facsimile shall be substantially  
 15 in the following form:

16 State of ....., County of .....

17 I, ..... (name of notary), a notary public  
 18 in and for said state, do certify that on ..... (date) I  
 19 carefully compared the attached facsimile of .....  
 20 (type of document) and the facsimile I now hold in my

21 possession. They are complete, full, true and exact  
 22 facsmilies of the document they support to reproduce.  
 23 .....  
 24 (Official signature and official seal of notary)

**ARTICLE 6. LIABILITY, FINES AND IMPRISONMENT.**

**PART I. LIABILITY.**

- §29C-6-101. Liability of notary and sureties.
- §29C-6-102. Liability of employer of notary.
- §29C-6-103. Proximate cause.

**PART II. MISCONDUCT.**

- §29C-6-201. Official misconduct defined.
- §29C-6-202. Official misconduct.
- §29C-6-203. Willful impersonation.
- §29C-6-204. Wrongful possession.

**PART I. LIABILITY.**

**§29C-6-101. Liability of notary and sureties.**

1 A notary public and the surety or sureties on his bond are  
 2 liable to the persons involved for all damages proximately  
 3 caused by the notary's official misconduct.

**§29C-6-102. Liability of employer of notary.**

1 The employer of a notary public is also liable to the  
 2 persons involved for all damages proximately caused by the  
 3 notary's official misconduct, if:

4 (a) The notary public was acting within the scope of his  
 5 employment at the time he engaged in the official  
 6 misconduct; and

7 (b) The employer consented to the notary public's  
 8 official misconduct.

**§29C-6-103. Proximate cause.**

1 It is not essential to a recovery of damages that a notary's  
 2 official misconduct be the only proximate cause of the  
 3 damages.

**PART II. MISCONDUCT.**

**§29C-6-201. Official misconduct defined.**

1 The term "official misconduct" means the wrongful

- 2 exercise of a power or the wrongful performance of a duty.  
 3 The term "wrongful" as used in the definition of official  
 4 misconduct means unauthorized, unlawful, abusive,  
 5 negligent, reckless or injurious.

**§29C-6-202. Official misconduct.**

1 (a) A notary public who knowingly and willfully  
 2 commits any official misconduct is guilty of a misdemeanor,  
 3 and, upon conviction, shall be fined not more than five  
 4 thousand dollars or imprisoned in the county jail not more  
 5 than one year or both fined and imprisoned.

6 (b) A notary public who recklessly or negligently  
 7 commits any official misconduct is guilty of a misdemeanor,  
 8 and, upon conviction, shall be fined not more than one  
 9 thousand dollars.

**§29C-6-203. Willful impersonation.**

1 Any person who acts as, or otherwise willfully  
 2 impersonates, a notary public while not lawfully appointed  
 3 and commissioned to perform notarial acts is guilty of a  
 4 misdemeanor, and, upon conviction, shall be fined not more  
 5 than five thousand dollars or imprisoned in the county jail  
 6 not more than one year, or both fined and imprisoned.

**§29C-6-204. Wrongful possession.**

1 Any person who unlawfully possesses a notary's official  
 2 seal or any papers or copies relating to notarial acts, is  
 3 guilty of a misdemeanor, and, upon conviction, shall be  
 4 fined not more than one thousand dollars.

**ARTICLE 7. REVOCATION OF COMMISSION; ACTION FOR INJUNCTION; UNAUTHORIZED PRACTICE OF LAW.**

**PART I. REVOCATION.**

§29C-7-101. Revocation of commission.

**PART II. INJUNCTIONS.**

§29C-7-201. Action for injunction; unauthorized practice of law.

§29C-7-202. Remedies additional to those now existing.

**PART I. REVOCATION.**

**§29C-7-101. Revocation of commission.**

1 The governor or secretary of state may revoke the



- 2 commission of any notary public who during the current  
3 term of appointment:
- 4 (a) Submits an application for commission and  
5 appointment as a notary public which contains substantial  
6 and material misstatement or omission of fact;
- 7 (b) Is convicted of any felony or official misconduct  
8 under this article;
- 9 (c) Fails to exercise the powers or perform the duties of a  
10 notary public in accordance with this article;
- 11 (d) Is adjudged liable in any suit grounded in fraud,  
12 misrepresentation, impersonation or violation of the state  
13 regulatory laws of this state, if his liability is not solely by  
14 virtue of his agency or employment relationship with  
15 another who engaged in the act for which the suit was  
16 brought;
- 17 (e) Represents or implies from unauthorized use of his  
18 title of notary public that he has qualifications, powers,  
19 duties, rights or privileges that by law he does not possess;
- 20 (f) Allows or permits his name or his title of notary  
21 public to be used deceptively, fraudulently or in false or  
22 misleading advertising;
- 23 (g) Engages in the unauthorized practice of law;
- 24 (h) Ceases to be a citizen of the United States or a  
25 national of a country which permits American citizens to  
26 become notaries public therein;
- 27 (i) Ceases to be a qualified elector of a state;
- 28 (j) Ceases to have a business or residence address in this  
29 state; or
- 30 (k) Becomes incapable of reading and writing the  
31 English language.

32 A notary's commission may be revoked under the  
33 provisions of this article only if action is taken subject to the  
34 rights of the notary public to notice, hearing, adjudication  
35 and appeal.

PART II. INJUNCTIONS.

§29C-7-201. Action for injunction; unauthorized practice of law.

1 Upon his own information or upon complaint of any
2 person, the attorney general, or his designee, may maintain
3 an action for injunctive relief in circuit court against any
4 notary public who renders, offers to render or holds himself
5 out as rendering any service constituting the unauthorized
6 practice of the law. Any organized bar association in this
7 state may intervene in the action, at any stage of the
8 proceeding, for good cause shown. The action may also be
9 maintained by an organized bar association in this state or
10 by the secretary of state.

§29C-7-202. Remedies additional to those now existing.

1 The remedies provided in article seven are in addition to,
2 and not in substitution for, other available remedies.

ARTICLE 8. CERTIFICATE OF AUTHORITY.

§29C-8-101. Certificate of authority.

1 Upon the receipt of a written request, the notarized
2 document and a fee of two dollars payable to the secretary
3 of state, the office of the secretary of state shall provide a
4 certificate of authority in substantially the following form:

5 I,..... (secretary of state
6 of the State of West Virginia, which office is an office of
7 record having a seal) certify that .....
8 (notary's name), by whom the foregoing or annexed
9 document was notarized, was, at the time of the
10 notarization of the same, a notary public authorized by the
11 laws of this state to act in this state and to notarize the
12 within ..... (type of document), and I
13 further certify that the notary's signature on the document
14 is genuine to the best of my knowledge, information and
15 belief and that such notarization was executed in
16 accordance with the laws of this state.

17 In testimony whereof, I have affixed my signature and the
18 seal of the State of West Virginia, this .....
19 day of ....., 19.....

20 .....
21 (Certifying officer's signature, title,
22 jurisdiction, address and the seal
23 affixed near the signature)

## CHAPTER 137

(Com. Sub. for S. B. 256—By Senator Stacy)

Passed March 9, 1984: in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact sections one-d and one-e, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to and increasing the limit on salaries for the supervising inspector and inspectors in the office of oil and gas and continuing and reestablishing the oil and gas inspectors' examining board within the department of mines.

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

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

### ARTICLE 4. OIL AND GAS WELLS.

§22-4-1d. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.

§22-4-1e. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally; continuing and reestablishing the oil and gas inspectors' examining board.

### §22-4-1d. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.

1 (a) No person is eligible for appointment as an oil and  
2 gas inspector or supervising inspector unless, at the time of  
3 his probationary appointment, he (1) is a citizen of West  
4 Virginia, in good health, and of good character, reputation  
5 and temperate habits; (2) has had at least ten years'  
6 practical experience in the oil and gas industry, at least five  
7 years of which, immediately preceding his original  
8 appointment shall have been in the oil and gas industry in  
9 this state: *Provided*, That a diploma in geology or in mining  
10 or petroleum engineering shall be considered the equivalent  
11 of five years' practical experience; and (3) has good  
12 theoretical and practical knowledge of oil and gas drilling

13 and production methods, practices and techniques, sound  
14 safety practices and applicable mining laws.

15 (b) In order to qualify for appointment as an oil and gas  
16 inspector or supervising inspector, an eligible applicant  
17 shall submit to a written and oral examination by the oil  
18 and gas inspectors' examining board and shall furnish such  
19 evidence of good health, character and other facts  
20 establishing eligibility as such board may require. If such  
21 board finds after investigation and examination that an  
22 applicant (1) is eligible for appointment and (2) has passed  
23 all written and oral examinations, the board shall add such  
24 applicant's name and grade to the register of qualified  
25 eligible candidates and certify its action to the  
26 administrator. No candidate's name may remain on the  
27 register for more than three years without requalifying.

28 (c) The salary of the supervising inspector shall be not  
29 less than twenty-seven thousand five hundred dollars per  
30 annum. Salaries of inspectors shall be not less than twenty-  
31 two thousand dollars per annum. The supervising inspector  
32 and inspectors shall receive mileage expense  
33 reimbursement at the rate established by rule of the  
34 commissioner of the department of finance and  
35 administration for in-state travel of public employees.  
36 Within the limits provided by law, the salary of each  
37 inspector and of the supervising inspector shall be fixed by  
38 the administrator, subject to the approval of the director of  
39 the department of mines and oil and gas inspectors'  
40 examining board. In fixing salaries of the oil and gas  
41 inspectors and of the supervising inspector, the  
42 administrator shall consider ability, performance of duty  
43 and experience. No reimbursement for traveling expenses  
44 may be made except upon an itemized account of such  
45 expenses submitted by the inspector or supervising  
46 inspector, as the case may be, who shall verify, upon oath,  
47 that such expenses were actually incurred in the discharge  
48 of his official duties.

49 (d) An inspector or the supervising inspector, after  
50 having received a permanent appointment, shall be  
51 removed from office only for physical or mental

52 impairment, incompetency, neglect of duty, drunkenness,  
53 malfeasance in office, or other good cause.

54 Proceedings for the removal of an oil and gas inspector or  
55 the supervising inspector may be initiated by the  
56 administrator or the director of the department of mines  
57 whenever either has reasonable grounds to believe and does  
58 believe that adequate cause exists warranting removal.  
59 Such a proceeding shall be initiated by a verified petition,  
60 filed with the oil and gas inspectors' examining board by  
61 the administrator or the director, setting forth with  
62 particularity the facts alleged. Not less than twenty  
63 reputable citizens engaged in oil and gas drilling and  
64 production operations in the state may petition the  
65 administrator or the director of the department of mines for  
66 the removal of an inspector or the supervising inspector. If  
67 such petition is verified by at least one of the petitioners,  
68 based on actual knowledge of the affiant, and alleges facts  
69 which, if true, warrant the removal of the inspector or  
70 supervising inspector, the administrator or the director of  
71 the department of mines shall cause an investigation of the  
72 facts to be made. If, after such investigation, the  
73 administrator or the director finds that there is substantial  
74 evidence which, if true, warrants removal of the inspector  
75 or supervising inspector, he shall file a petition with the oil  
76 and gas inspectors' examining board requesting removal of  
77 the inspector or supervising inspector.

78 On receipt of a petition by the administrator or by the  
79 director of the department of mines seeking removal of an  
80 inspector or the supervising inspector, the oil and gas  
81 inspectors' examining board shall promptly notify the  
82 inspector or supervising inspector, as the case may be, to  
83 appear before it at a time and place designated in said  
84 notice, which time shall be not less than fifteen days nor  
85 more than thirty days thereafter. There shall be attached to  
86 the copy of the notice served upon the inspector or  
87 supervising inspector a copy of the petition filed with such  
88 board.

89 At the time and place designated in said notice, the oil and  
90 gas inspectors' examining board shall hear all evidence  
91 offered in support of the petition and on behalf of the

92 inspector or supervising inspector. Each witness shall be  
93 sworn and a transcript shall be made of all evidence taken  
94 and proceedings had at any such hearing. No continuance  
95 may be granted except for good cause shown.

96 The chairman of the board, the administrator and the  
97 director of the department of mines may administer oaths  
98 and subpoena witnesses.

99 An inspector or supervising inspector who willfully  
100 refuses or fails to appear before such board, or having  
101 appeared, refuses to answer under oath any relevant  
102 question on the ground that his testimony or answer might  
103 incriminate him, or refuses to accept a grant of immunity  
104 from prosecution on account of any relevant matter about  
105 which he may be asked to testify at such hearing before such  
106 board, forfeits his position.

107 If, after hearing, the oil and gas inspectors' examining  
108 board finds that the inspector or supervising inspector  
109 should be removed, it shall enter an order to that effect. The  
110 decision of the board shall be final and shall not be subject  
111 to judicial review.

**§22-4-1e. Oil and gas inspectors' examining board created;  
composition; appointment, term and  
compensation of members; meetings; powers and  
duties generally; continuing and reestablishing  
the oil and gas inspectors' examining board.**

1 (a) There is hereby created an oil and gas inspectors'  
2 examining board consisting of five members who, except  
3 for the public representative on such board, shall be  
4 appointed by the governor, by and with the advice and  
5 consent of the Senate. Members may be removed only for  
6 the same causes and like manner as elective state officers.  
7 One member of the board who shall be the representative of  
8 the public, shall be a professor in the petroleum engineering  
9 department of the school of mines at West Virginia  
10 University appointed by the dean of said school; two  
11 members shall be persons who by reason of previous  
12 training and experience may reasonably be said to  
13 represent the viewpoint of independent oil and gas

14 operators; and two members shall be persons who by reason  
15 of previous training and experience may reasonably be said  
16 to represent the viewpoint of major oil and gas producers.

17 The administrator for oil and gas shall be an ex officio  
18 member of the board and shall serve as secretary of the  
19 board without additional compensation, but he shall have  
20 no right to vote with respect to any matter before the board.

21 The members of the board, except the public  
22 representative, shall be appointed for overlapping terms of  
23 eight years, except that the original appointments shall be  
24 for terms of two, four, six and eight years, respectively. Any  
25 member whose term expires may be reappointed by the  
26 governor.

27 Each member of the board shall receive seventy-five  
28 dollars per diem while actually engaged in the performance  
29 of the work of the board, and shall receive mileage at the  
30 rate of not more than fifteen cents for each mile actually  
31 traveled going from the home of the member to the place of  
32 the meeting of the board and returning therefrom, which  
33 shall be paid out of the state treasury upon a requisition  
34 upon the state auditor, properly certified by such members  
35 of the board.

36 The public member shall serve as chairman of the board.

37 Members of the board, before performing any duty, shall  
38 take and subscribe to the oath required by section five,  
39 article four of the constitution of West Virginia.

40 The board shall meet at such times and places as shall be  
41 designated by the chairman. It shall be the duty of the  
42 chairman to call a meeting of the board on the written  
43 request of two members, or on the written request of the  
44 administrator for oil and gas or the director of the  
45 department of mines. Notice of each meeting shall be given  
46 in writing to each member by the secretary at least five days  
47 in advance of the meeting. Three voting members shall  
48 constitute a quorum for the transaction of business.

49 (b) In addition to other powers and duties expressly set  
50 forth elsewhere in this article, the board shall:

51 (1) Establish, and from time to time revise, forms of

52 application for employment as an oil and gas inspector and  
53 supervising inspector and forms for written examinations  
54 to test the qualifications of candidates, with such  
55 distinctions, if any, in the forms for oil and gas inspector  
56 and supervising inspector as the board may from time to  
57 time deem necessary or advisable;

58 (2) Adopt and promulgate reasonable rules and  
59 regulations relating to the examination, qualification and  
60 certification of candidates for appointment, and relating to  
61 hearings for removal of inspectors or the supervising  
62 inspector, required to be held by this article. All of such  
63 rules and regulations shall be printed and a copy thereof  
64 furnished by the secretary of the board to any person upon  
65 request;

66 (3) Conduct, after public notice of the time and place  
67 thereof, examinations of candidates for appointment. By  
68 unanimous agreement of all members of the board, one or  
69 more members of the board or an employee of the  
70 department of mines may be designated to give to a  
71 candidate the written portion of the examination;

72 (4) Prepare and certify to the administrator for oil and  
73 gas and the director of the department of mines a register of  
74 qualified eligible candidates for appointment as oil and gas  
75 inspectors or as supervising inspectors, with such  
76 differentiation, if any, between the certification of  
77 candidates for oil and gas inspectors and for supervising  
78 inspectors as the board may from time to time deem  
79 necessary or advisable. The register shall list all qualified  
80 eligible candidates in the order of their grades, the  
81 candidate with the highest grade appearing at the top of the  
82 list. After each meeting of the board held to examine such  
83 candidates and at least annually, the board shall prepare  
84 and submit to the administrator for oil and gas and the  
85 director of the department of mines a revised and corrected  
86 register of qualified eligible candidates for appointment,  
87 deleting from such revised register all persons (a) who are  
88 no longer residents of West Virginia, (b) who have allowed a  
89 calendar year to expire without, in writing, indicating their  
90 continued availability for such appointment, (c) who have  
91 been passed over for appointment for three years, (d) who



- 92 have become ineligible for appointment since the board  
93 originally certified that such persons were qualified and  
94 eligible for appointment, or (e) who, in the judgment of at  
95 least three members of the board, should be removed from  
96 the register for good cause;
- 97 (5) Cause the secretary of the board to keep and preserve  
98 the written examination papers, manuscripts, grading  
99 sheets and other papers of all applicants for appointment  
100 for such period of time as may be established by the board.  
101 Specimens of the examinations given, together with the  
102 correct solution of each question, shall be preserved  
103 permanently by the secretary of the board;
- 104 (6) Issue a letter or written notice of qualification to  
105 each successful eligible candidate;
- 106 (7) Hear and determine proceedings for the removal of  
107 inspectors or the supervising inspector in accordance with  
108 the provisions of this article;
- 109 (8) Hear and determine appeals of inspectors or the  
110 supervising inspector from suspension orders made by the  
111 administrator for oil and gas pursuant to the provisions of  
112 section one-a of this article: *Provided*, That in order to  
113 appeal from any order of suspension, an aggrieved  
114 inspector or supervising inspector shall file such appeal in  
115 writing with the oil and gas inspectors' examining board  
116 not later than ten days after receipt of the notice of  
117 suspension. On such appeal the board shall affirm the  
118 action of the administrator for oil and gas unless it be  
119 satisfied from a clear preponderance of the evidence that  
120 the administrator for oil and gas has acted arbitrarily;
- 121 (9) Make an annual report to the governor concerning  
122 the administration of oil and gas inspection personnel in the  
123 state service; making such recommendations as the board  
124 considers to be in the public interest; and
- 125 (10) Render such advice and assistance to the  
126 administrator for oil and gas as he shall from time to time  
127 determine necessary or desirable in the performance of his  
128 duties.

129 (c) After having conducted a performance and fiscal  
130 audit through its joint committee on government  
131 operations, pursuant to section nine, article ten, chapter  
132 four of this code, the Legislature hereby finds and declares  
133 that the oil and gas inspectors' examining board within the  
134 department of mines should be continued and  
135 reestablished. Accordingly, notwithstanding the provisions  
136 of section four, article ten, chapter four of this code, the oil  
137 and gas inspectors' examining board within the department  
138 of mines shall continue to exist until the first day of July,  
139 one thousand nine hundred eighty-seven.

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## CHAPTER 138

(S. B. 87—By Senator Tucker)

| Passed February 29, 1984: in effect ninety days from passage. Approved by the Governor. |

AN ACT to amend article four, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-b, relating to free use of picnic shelters in state parks and recreation areas by individuals donating materials and labor and constructing such shelters with the consent of the director of the department of natural resources.

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

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

### **ARTICLE 4. PARKS AND RECREATION.**

#### **§20-4-4b. Free use of picnic shelters in state parks and recreation areas.**

- 1 The director, or any other officer, employee or agent of
- 2 the department of natural resources, may not charge a
- 3 private individual or group of individuals constructing a

4 picnic shelter in a state park or recreation area any fee for  
5 the use of that picnic shelter for one reserved date during  
6 the calendar year for recreational purposes, so long as the  
7 private individual or group of individuals donated the  
8 materials and labor for the shelter and was authorized by  
9 the director to construct the same.

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## CHAPTER 139

(Com. Sub. for S. B. 482—By Senator Lucht)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to licenses to practice medicine, surgery and podiatry; educational training permits; temporary licenses and permits; extension of time in which temporary permittees must become licensed.

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

That section ten, 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; educational training permits; temporary licenses and permits.

1 (a) The board shall issue a license to practice medicine  
2 and surgery or to practice podiatry to any individual who  
3 is qualified to do so in accordance with the provisions of  
4 this article.

5 (b) For an individual to be licensed to practice medi-  
6 cine and surgery in this state, he must meet the follow-  
7 ing requirements:

8 (1) He shall submit an application to the board on a  
9 form provided by the board and remit to the board an

10 examination fee not to exceed two hundred fifty dollars,  
11 the amount of such fee to be set by the board. The ap-  
12 plication must, as a minimum, require a sworn and notar-  
13 ized statement that the applicant is of good moral  
14 character and that he is physically and mentally capable  
15 of engaging in the practice of medicine and surgery;

16 (2) He must provide evidence of graduation and receipt  
17 of the degree of doctor of medicine or its equivalent from  
18 a school of medicine which is approved by the liaison  
19 committee on medical education or by the board;

20 (3) He must submit evidence to the board of having  
21 completed a minimum of one year of graduate clinical  
22 training in a program approved by the board; and

23 (4) He must pass an examination approved by the  
24 board, which examination can be related to a national  
25 standard. The examination shall be in the English  
26 language and be designed to ascertain an applicant's fit-  
27 ness to practice medicine and surgery. The board shall  
28 before the date of examination determine what will  
29 constitute a passing score: *Provided*, That the said board,  
30 or a majority of them, may accept in lieu of an examina-  
31 tion of applicants, the certificate of the national board  
32 of medical examiners issued within the previous eight  
33 years, or diplomate certificate from an American special-  
34 ty board: *Provided, however*, That any certificate or  
35 license to practice which is granted by the board by vir-  
36 tue of such diplomate certificate shall only be valid so  
37 long as the holder thereof maintains such diplomate  
38 certificate in good standing with the applicable Ameri-  
39 can specialty board and no longer and such certification  
40 shall be limited to that specific specialty in the practice  
41 of medicine and surgery in this state. If an applicant  
42 fails to pass the examination on two occasions, he shall  
43 successfully complete a course of study or training, as  
44 approved by the board, designed to improve his ability  
45 to engage in the practice of medicine and surgery, before  
46 being eligible for reexamination: *Provided further*, That  
47 said board is required to establish a program that will  
48 assist all temporary license holders in preparing for and

49 passing the medical examination prescribed by it: *And*  
50 *provided further*, That said board shall maintain the  
51 program until the first day of July, one thousand nine  
52 hundred eighty-four, and shall make an annual report of  
53 its activities to the Legislature for each year the program  
54 is maintained.

55 (c) In addition to the requirements of subsection (b)  
56 hereof, any individual who has received the degree of  
57 doctor of medicine or its equivalent from a school of  
58 medicine located outside of the United States, the Com-  
59 monwealth of Puerto Rico and Canada, to be licensed to  
60 practice medicine in this state, must also meet the fol-  
61 lowing additional requirements and limitations:

62 (1) He must be able to demonstrate to the satisfaction  
63 of the board his ability to communicate in the English  
64 language; and

65 (2) He must have fulfilled the requirements of the  
66 educational council for foreign medical graduates for  
67 certification before taking a licensure examination, in-  
68 cluding the receipt of a passing score on the educational  
69 council for foreign medical graduates examination; and

70 (3) An individual subject to the provisions of this sub-  
71 section shall not be awarded a temporary permit unless  
72 such individual was a bona fide resident of this state for  
73 the six-month period preceding the filing of his applica-  
74 tion for such temporary permit: *Provided*, That an indi-  
75 vidual subject to the provisions of this subsection who  
76 did not hold a temporary permit before June eight, one  
77 thousand nine hundred seventy-nine, shall be ineligible  
78 for a temporary permit if he has failed to pass the medical  
79 examination prescribed by the board on two or more  
80 occasions.

81 (d) For an individual to be licensed to practice podiatry  
82 in this state, he must meet the following requirements:

83 (1) He shall submit an application to the board on a  
84 form provided by the board and remit to the board an  
85 examination fee not to exceed two hundred fifty dollars,  
86 the amount of such fee to be set by the board. The ap-

87 plication must, as a minimum, require a sworn and notar-  
88 ized statement that the applicant is of good moral char-  
89 acter and that he is physically and mentally capable of  
90 engaging in the practice of podiatric medicine;

91 (2) He must provide evidence of graduation and receipt  
92 of the degree of doctor of podiatric medicine or its  
93 equivalent from a school of podiatric medicine which  
94 is approved by the council of podiatry education or by  
95 the board;

96 (3) He must pass an examination approved by the  
97 board, which examination can be related to a national  
98 standard. The examination shall be in the English  
99 language and be designed to ascertain an applicant's  
100 fitness to practice podiatric medicine. The board shall  
101 before the date of examination determine what will con-  
102 stitute a passing score. If an applicant fails to pass the  
103 examination on two occasions, he shall successfully com-  
104 plete a course of study or training, as approved by the  
105 board, designed to improve his ability to engage in the  
106 practice of podiatric medicine, before being eligible for  
107 reexamination.

108 (e) An individual meeting the requirements set forth  
109 in subdivisions (1) and (2), subsection (b) and sub-  
110 divisions (1) and (2), subsection (c), if applicable, of  
111 of this section, may be granted an educational training  
112 permit to practice medicine and surgery. Such permits  
113 shall authorize the permit holder to practice medicine  
114 and surgery only under the supervision of a licensed  
115 physician in a training program approved by the liaison  
116 committee on graduate medical education or the board.  
117 The board may fix and collect a fee not to exceed fifty  
118 dollars for this class of permit.

119 (f) If the board determines that the public health in a  
120 specified geographical area of the state requires such  
121 action, the board may grant a temporary permit to an  
122 individual who meets the requirements set forth in sub-  
123 divisions (1) and (2), subsection (b) and subdivisions  
124 (1) and (2), subsection (c), if applicable, of this section.  
125 Such license shall be limited to the specified geographical

126 area and shall be valid for a period of not more than one  
127 year. The board may fix and collect a fee not to exceed  
128 fifty dollars for this class of temporary permit.

129 (g) All licenses or temporary permits granted prior  
130 to the effective date of this article and valid on the ef-  
131 fective date of this article shall continue in full effect  
132 for such term and under such conditions as provided by  
133 law at the time of the granting of the license or temporary  
134 permit: *Provided*, That any physician who has been  
135 certified by the educational council for foreign medical  
136 graduates or who, as of the effective date of this section,  
137 holds a temporary permit to practice in a prescribed area,  
138 shall not when under the supervision of a licensed physi-  
139 cian be ineligible for a temporary license permit to  
140 practice in any mental health or state-owned facility and  
141 in any hospital, clinic, physician's office and any other  
142 approved health care facility until the first day of July,  
143 one thousand nine hundred eighty-five, by virtue of his  
144 failure to pass the medical examination prescribed by  
145 the board, so long as such physician shall take said  
146 examination at least once each year: *Provided, however*,  
147 That, such physician shall be enrolled in an educational  
148 program approved by the board that will assist him in  
149 preparing for the examination and that the program  
150 sponsored by the University of Charleston shall be deemed  
151 to be so approved: *Provided further*, That any such phy-  
152 sician granted a temporary permit who fails to pass the  
153 medical examination prescribed by the board before the  
154 first day of July, one thousand nine hundred eighty-five,  
155 shall be thereafter disqualified from obtaining any further  
156 temporary permits in this state: *And provided further*,  
157 That notwithstanding any provision of law to the con-  
158 trary, the name, address, and type of license or permit  
159 held by any physician shall be public information: *And*  
160 *provided further*, That the provisions of subsection (d)  
161 of this section shall not apply to any person legally en-  
162 titled to practice chiropody or podiatry in this state prior  
163 to June eleventh, one thousand nine hundred sixty-five:  
164 *And provided further*, That all persons licensed to prac-  
165 tice chiropody prior to June eleventh, one thousand nine

166 hundred sixty-five, shall be permitted to use the term  
167 "chiroprody-podiatry" and shall have the rights, privileges  
168 and responsibilities of a podiatrist set out in this article.

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## CHAPTER 140

(S. B. 100—By Senator Kaufman)

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[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section thirteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the unauthorized practice of medicine and surgery or podiatry; penalties; setting forth exceptions; providing that the fitting or sale of prosthetic or orthotic devices, in accord with a prescription as required by this section, by duly certified practitioners and registered technicians in prosthetics and orthotics is exempted from medical licensure requirements; providing that any partnership, proprietorship or corporation employing such practitioners or technicians is exempted from medical licensure requirements; permitting such practitioners or technicians to make recommendations to certain specified persons; and excluding the services of a physician's assistant from the effect of this section.

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

That section thirteen, 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.**

#### **§30-3-13. Unauthorized practice of medicine and surgery or podiatry; criminal penalties; limitations.**

- 1 (a) A person shall not engage in the practice of medi-
- 2 cine and surgery or podiatry, hold himself out as qualified



3 to practice medicine and surgery or podiatry or use any  
4 title, word or abbreviation to indicate to or induce  
5 others to believe that he is licensed to practice medicine  
6 and surgery or podiatry in this state unless he is actually  
7 licensed under the provisions of this article. Any person  
8 who violates the provisions of this subsection is guilty of  
9 a misdemeanor, and, upon conviction thereof, shall be  
10 fined not more than ten thousand dollars, or imprisoned  
11 in the county jail not more than twelve months, or both  
12 fined and imprisoned.

13 (b) The provisions of this section do not apply to:

14 (1) Persons who are duly licensed health care providers  
15 under other pertinent provisions of this code and are  
16 acting within the scope of their license;

17 (2) Physicians or podiatrists licensed in other states or  
18 foreign countries who are acting in a consulting capac-  
19 ity with physicians or podiatrists duly licensed in this  
20 state, for a period of not more than three months;

21 (3) Persons holding licenses granted by another state  
22 or foreign country who are commissioned medical of-  
23 ficers of, a member of or employed by the armed forces  
24 of the United States, the United States public health ser-  
25 vice, the veterans' administration of the United States,  
26 any federal institution or any other federal agency while  
27 engaged in the performance of their official duties;

28 (4) Any person providing first-aid care in emergency  
29 situations;

30 (5) The practice of the religious tenets of any recog-  
31 nized church in the administration of assistance to the  
32 sick or suffering by mental or spiritual means;

33 (6) Visiting medical faculty engaged in teaching or  
34 research duties at a medical school or institution recog-  
35 nized by the board and who are in this state for periods  
36 of not more than six months: *Provided*, That such indi-  
37 viduals do not otherwise engage in the practice of medi-

38 cine or podiatry outside of the auspices of their sponsor-  
39 ing institutions;

40 (7) Persons enrolled in a school of medicine approved  
41 by the liaison committee on medical education or by the  
42 board, or persons enrolled in a school of podiatric medi-  
43 cine approved by the council of podiatry education or by  
44 the board, or engaged in graduate medical training in a  
45 program approved by the liaison committee on graduate  
46 medical education or the board who are performing func-  
47 tions in the course of training;

48 (8) The fitting, recommending or sale of corrective  
49 shoes, arch supports or similar mechanical appliances in  
50 commercial establishments; and

51 (9) The fitting or sale of a prosthetic or orthotic device  
52 not involving any surgical procedure, in accord with a pre-  
53 scription of a physician, osteopathic physician, or where  
54 chiropractors or podiatrists are authorized by law to pre-  
55 scribe such a prosthetic or orthotic device, in accord with  
56 a prescription of a chiropractor or podiatrist, by a practi-  
57 tioner or registered technician certified by the American  
58 Board for Certification of Orthotics and Prosthetics in  
59 either prosthetics or orthotics: *Provided*, That the sale of  
60 any such prosthetic or orthotic device by a partnership,  
61 proprietorship or corporation which employs such a prac-  
62 titioner or registered technician who fitted such prosthetic  
63 or orthotic device shall not constitute the unauthorized  
64 practice of medicine: *Provided, however*, That such prac-  
65 titioner or registered technician may, without a prescrip-  
66 tion, make recommendation solely to a physician or  
67 osteopathic physician or to a chiropractor or podiatrist  
68 otherwise authorized by law to prescribe a particular  
69 prosthetic or orthotic device, regarding any prosthetic  
70 or orthotic device to be used for a patient upon a request  
71 for such recommendation.

72 (c) This section shall not be construed as being in any  
73 way a limitation upon the services of a physician's as-  
74 sistant performed in accordance with the provisions of  
75 this article.

## CHAPTER 141

(Com. Sub. for H. B. 1292—By Delegate Miller and Delegate Leary)

[Passed February 28, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one and twelve-b, article five of said chapter, all relating to permitting certain authorized Type A physician assistants to prescribe drugs at the direction of a supervising physician under specific circumstances; directing the establishment of regulations by the board of medicine limiting the drugs which may be so prescribed; definitions enabling pharmacists to dispense drugs approved by the board of medicine when ordered by an authorized Type A physician assistant at the direction of his or her supervising physician.

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

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

### Article

3. West Virginia Medical Practice Act.

5. Pharmacists, Assistant Pharmacists and Drugstores.

### ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-16. **Physician assistants; definitions; board of medicine rules and regulations; annual report; certification; temporary certification; recertification; reciprocity; job description required; revocation or suspension of certification; responsibilities of supervising physician; legal responsibility for physician assistants; identification; limitations on employment and duties; fees; unlawful use of title of "physician assistant"; unlawful representation of physician assistant as a physician; criminal penalties.**

1 (a) As used in this section:

2 (1) "Type A physician assistant" means an assistant to a  
3 primary care physician who is a graduate of an approved pro-  
4 gram of instruction in primary health care, has passed the  
5 national certification examination and is qualified to perform  
6 direct patient care services under the supervision of the pri-  
7 mary care physician;

8 (2) "Type B physician assistant" means an assistant to a  
9 physician who is a graduate of an approved program of in-  
10 struction in a recognized nonprimary care clinical specialty  
11 or is a graduate of an approved program of instruction in  
12 primary health care and has either received additional post-  
13 graduate training in a recognized nonprimary care clinical  
14 specialty or has received additional training from a physician  
15 adequate to qualify him or her to perform patient services in  
16 that specialty as defined by the supervising physician;

17 (3) "Supervising physician" means a doctor of medicine or  
18 podiatry permanently licensed in this state who assumes legal  
19 and supervisory responsibility for the work or training of any  
20 physician assistant under his or her supervision;

21 (4) "Approved program" means an educational program for  
22 physician assistants approved and accredited by the com-  
23 mittee on allied health education and accreditation on behalf  
24 of the American Medical Association; and

25 (5) "Health care facility" means any licensed hospital,  
26 nursing home, extended care facility, state health or mental  
27 institution, clinic or physician's office.

28 (b) The board shall promulgate rules and regulations gov-  
29 erning the extent to which physician assistants may function  
30 in this state. Such regulations shall provide that the physician  
31 assistant is limited to the performance of those services for  
32 which he or she is trained and that he or she performs only  
33 under the supervision and control of a physician permanently  
34 licensed in this state, but such supervision and control does  
35 not require the personal presence of the supervising physician  
36 at the place or places where services are rendered if the phy-  
37 sician assistant's normal place of employment is on the prem-  
38 ises of the supervising physician. The supervising physician

39 may send the physician assistant off the premises to perform  
40 duties under his or her direction, but a separate place of work  
41 for the physician assistant shall not be established. In prom-  
42 ulgating such rules and regulations, the board shall allow the  
43 physician assistant to perform those procedures and examina-  
44 tions and in the case of certain authorized Type A physician  
45 assistants to prescribe at the direction of his or her supervising  
46 physician in accordance with subsection (1) of this section  
47 those categories of drugs submitted to it in the job description  
48 required by subsection (i) of this section. The board shall  
49 compile and publish an annual report that includes a list of  
50 currently certified physician assistants and their employers  
51 and location in the state; a list of approved programs; the  
52 number of graduates of such approved programs each year;  
53 and the number of physician assistants from other states prac-  
54 ticing in this state.

55 (c) The board shall certify as a Type A physician assistant  
56 any person who files an application and furnishes satisfactory  
57 evidence to it that he or she has met the following standards:

58 (1) He or she is a graduate of an approved program of  
59 instruction in primary health care;

60 (2) He or she has passed the examination for a primary  
61 care physician assistant administered by the National Board  
62 of Medical Examiners on behalf of the National Commission  
63 on Certification of Physician Assistants; and

64 (3) He or she is of good moral character.

65 (d) The board may certify as a Type B physician assistant  
66 any person who files an application and furnishes satisfactory  
67 evidence to it that he or she has met the following standards:

68 (1) He or she is of good moral character;

69 (2) He or she is a graduate of an approved program of in-  
70 struction in a recognized nonprimary care clinical specialty  
71 or is a graduate of an approved program of instruction in  
72 primary health care and has either received additional post-  
73 graduate training in a recognized nonprimary care clinical  
74 specialty or has received additional training from a physician

75 adequate to qualify him or her to perform patient services  
76 in that specialty as defined by the supervising physician; or

77 (3) He or she has been previously certified by  
78 the board as a Type B physician assistant prior to  
79 the first day of July, one thousand nine hundred eighty-  
80 three.

81 Certification of an assistant to a physician practicing the  
82 specialty of ophthalmology is not permitted or required under  
83 this section.

84 (e) When any graduate of an approved program submits an  
85 application to the board, accompanied by a job description  
86 in conformity with subsection (i) of this section, for a Type  
87 A physician assistant certificate, the board shall issue to  
88 such applicant a temporary certificate allowing such appli-  
89 cant to function as a Type A physician assistant for the  
90 period of one year. Said temporary certificate may be renewed  
91 for one additional year upon the request of the supervising  
92 physician. A Type A physician assistant who has not been  
93 certified as such by the National Board of Medical Examiners  
94 on behalf of the National Commission on Certification of  
95 Physician Assistants will be restricted to work under the  
96 direct supervision of the supervising physician.

97 (f) When any person who meets the qualifications for a  
98 Type B physician assistant as defined in this section and  
99 who submits an application accompanied by a job description  
100 for a Type B physician assistant certificate, the board may  
101 certify such applicant as a Type B physician assistant for a  
102 period of four months. Upon expiration of the four-month  
103 temporary certification, the board may certify the applicant  
104 as a Type B physician assistant. The Type B physician assis-  
105 tant will be restricted to work under the direct supervision  
106 of the supervising physician until he or she has passed either  
107 the examination for surgical assistants or the examination for  
108 primary care physician assistants administered by the National  
109 Board of Medical Examiners on behalf of the National Com-  
110 mission on Certification of Physician Assistants.

111 (g) Certification of a Type B physician assistant is subject

112 to review and recertification after every three-year period fol-  
113 lowing the first certification. Recertification requires a re-  
114 port from the supervising physician of a Type B physician  
115 assistant which must include a performance evaluation, a  
116 summary of experience or continuing medical education and  
117 any proposed change in job description.

118 (h) The board may certify as a physician assistant in this  
119 state without examination any person who has been certified  
120 or licensed by examination in another state of the United States  
121 which has requirements substantially equivalent to the re-  
122 quirements of this section.

123 (i) Any physician applying to the board to supervise either  
124 a Type A or Type B physician assistant shall provide a job  
125 description that sets forth the range of medical services to be  
126 provided by such assistant. Before a physician assistant can be  
127 employed or otherwise use his or her skills, the supervising  
128 physician must obtain approval of the job description from  
129 the board. The board may revoke or suspend any certification  
130 of an assistant to a physician for cause, after giving such per-  
131 son an opportunity to be heard in the manner provided by  
132 sections eight and nine, article one of this chapter.

133 (j) The supervising physician is responsible for observing,  
134 directing and evaluating the work, records and practices of  
135 each physician assistant performing under his or her super-  
136 vision. He or she shall notify the board in writing of any  
137 termination of his or her supervisory relationship with a phy-  
138 sician assistant within ten days of the termination. The legal  
139 responsibility for any physician assistant remains with the  
140 supervising physician at all times, including occasions when  
141 the assistant under his or her direction and supervision, aids in  
142 the care and treatment of a patient in a health care facility.  
143 A health care facility is not legally responsible for the actions  
144 or omissions of the physician assistant unless the physician as-  
145 sistant is an employee of the facility.

146 (k) When functioning as a physician assistant, the physician  
147 assistant shall wear a name tag that identifies him or her and  
148 specifies his or her type of classification and the name of his  
149 or her supervising physician. A two and one-half by three and

150 one-half inch card of identification shall be furnished by the  
151 board upon certification of the physician assistant and shall  
152 specify the type of classification.

153 (1) A Type A physician assistant providing primary care  
154 outpatient services in a medically underserved area or other  
155 area of need, both as defined by the board, may write or sign  
156 prescriptions or transmit prescriptions by word of mouth, tele-  
157 phone or other means of communication at the direction of  
158 his or her supervising physician. The board shall promulgate  
159 rules and regulations governing the eligibility and extent to  
160 which such a Type A physician assistant may prescribe at the  
161 direction of the supervising physician. The regulations shall  
162 provide for a state formulary classifying pharmacologic cate-  
163 gories of drugs which may be prescribed by such a Type A  
164 physician assistant. In classifying such pharmacologic cate-  
165 gories, those categories of drugs which shall be excluded shall  
166 include, but not limited to, Schedules I and II of the Uniformed  
167 Controlled Substances Act, anticoagulants, antineoplastics,  
168 antipsychotics, radiopharmaceuticals, general anesthetics and  
169 radiographic contrast materials. Drugs listed under schedule  
170 III shall be limited to a forty-eight hour supply without re-  
171 fill. The regulations shall provide that all pharmacological  
172 categories of drugs to be prescribed by a Type A physician  
173 assistant shall be listed in each job description submitted to  
174 the board as required in subsection (i) of this section. The  
175 regulations shall provide the maximum dosage a Type A  
176 physician assistant may prescribe. The regulation shall also  
177 provide that to be eligible for such prescription privileges,  
178 a Type A physician assistant shall have performed patient  
179 care services for a minimum of two years immediately pre-  
180 ceding the submission to the board of the job description  
181 containing prescription privileges and shall have successfully  
182 completed an accredited course of instruction in clinical  
183 pharmacology approved by the board. The regulations shall  
184 also provide that to maintain prescription privileges, a phy-  
185 sician assistant shall continue to maintain national certifi-  
186 cation as a physician assistant, and in meeting such national  
187 certification requirements shall complete a minimum of ten  
188 hours of continuing education in rational drug therapy in each



189 certification period. Nothing in this subsection shall be con-  
190 strued to permit a Type A physician assistant to independently  
191 prescribe or dispense drugs.

192 (m) A supervising physician shall not supervise at any  
193 one time more than two physician assistants.

194 A physician assistant shall not sign any prescription, except  
195 in the case of an authorized Type A physician assistant at the  
196 direction of his or her supervising physician in accordance  
197 with the provisions of subsection (l) of this section. A physi-  
198 cian assistant shall not perform any service that his or her  
199 supervising physician is not qualified to perform. A physician  
200 assistant shall not perform any service that is not included in  
201 his job description and approved by the board as provided for  
202 in this section.

203 The provisions of this section do not authorize any phy-  
204 sician assistant to perform any specific function or duty dele-  
205 gated by this code to those persons licensed as chiropractors,  
206 dentists, dental hygienists, optometrists or pharmacists or  
207 certified as nurse anesthetists.

208 (n) Each job description submitted by a licensed supervis-  
209 ing physician shall be accompanied by a fee of fifty dollars. A  
210 fee of five dollars shall be charged for the annual renewal of  
211 the certificate.

212 (o) It is unlawful for any person who is not certified by the  
213 board as a physician assistant to use the title of "physician  
214 assistant" or to represent to any other person that he or she  
215 is a physician assistant. Any person who violates the provisions  
216 of this subsection is guilty of a misdemeanor, and, upon con-  
217 viction thereof, shall be fined not more than two thousand  
218 dollars.

219 (p) It is unlawful for any physician asslstant to represent to  
220 any person that he or she is a physician, surgeon or podia-  
221 trist. Any person who violates the provisions of this subsection  
222 is guilty of a felony, and, upon conviction thereof, shall be  
223 imprisoned in the penitentiary for not less than one nor more  
224 than two years, or be fined not more than two thousand dollars,  
225 or both fined and imprisoned.

**ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUG-STORES.**

§30-5-1. Definitions.

§30-5-12b. Definitions; selection of generic drug products.

**§30-5-1. Definitions.**

1 The following words and phrases as used in this article,  
2 shall have the following meanings, unless the context other-  
3 wise requires:

4 (1) The term "drug" means (a) articles in the official  
5 United States Pharmacopoeia, or official National Formulary,  
6 or any other supplement to either of them, which are  
7 intended for use in the diagnosis, cure, mitigation, treat-  
8 ment or prevention of disease in man or other animals, and  
9 (b) all other articles intended for use in the diagnosis,  
10 cure, mitigation, treatment, or prevention of disease in man  
11 or other animals, and (c) articles, other than food, in-  
12 tended to affect the structure or any function of the body of  
13 man or other animals and (d) articles intended for use  
14 as a component of any articles specified in clause (a), (b)  
15 or (c).

16 (2) The term "poisonous drug" means any drug likely to  
17 be destructive to adult human life in quantities of five grains  
18 or less.

19 (3) The term "deleterious drug" means any drug likely to  
20 be destructive to adult human life in quantities of sixty  
21 grains or less.

22 (4) The term "habit-forming drug" means any drug which  
23 has been or may be designated as habit forming under the  
24 regulations promulgated in accordance with section 502 (d)  
25 of the Federal Food, Drug and Cosmetic Act of June twenty-  
26 fifth, one thousand nine hundred thirty-eight.

27 (5) The term "pharmacy" or "drugstore" or "apothecary"  
28 shall be held to mean and include every store or shop or  
29 other place (a) where drugs are dispensed or sold at  
30 retail or displayed for sale at retail; or (b) where physicians'  
31 prescriptions are compounded; or (c) which has upon it  
32 or displayed within it, or affixed to or used in connection

33 with it, a sign bearing the word or words "pharmacy," "pharma-  
34 cists," "apothecary," "drugstore," "drugs," "druggists," "medi-  
35 cine," "medicine store," "drug sundries," "remedies" or any  
36 word or words of similar or like import; or (d) any store or  
37 shop or other place, with respect to which any of the above  
38 words are used in any advertisement.

39 (6) The term "prescription" shall be held to mean an  
40 order for drugs or medicines or combinations or mixtures  
41 thereof, written or signed by a duly licensed physician, an  
42 authorized Type A physician assistant at the direction of  
43 his or her supervising physician in accordance with the  
44 provisions of section sixteen, article three of this chapter,  
45 dentist, optometrist, as authorized by section two, article  
46 eight of this chapter, veterinarian or other medical practi-  
47 tioner licensed to write prescriptions intended for the treat-  
48 ment or prevention of disease of man or animals. Any  
49 prescription written or signed by an authorized Type A  
50 physician assistant shall be imprinted with the name of his  
51 or her supervising physician, the name of the physician as-  
52 sistant, and a list of drugs approved under the Type A  
53 physician assistant's job description, in accordance with the  
54 provisions of section sixteen, article three of this chapter.  
55 The term "prescription" shall also include orders for drugs  
56 or medicines or combinations or mixtures thereof transmitted  
57 to the pharmacist by word of mouth, telephone or other  
58 means of communication by a duly licensed physician, an  
59 authorized Type A physician assistant, dentist, optometrist,  
60 veterinarian or other medical practitioner licensed to write  
61 prescriptions intended for treatment or prevention of disease  
62 of man or animals, and such prescriptions received by word  
63 of mouth, telephone or other means of communication shall  
64 be recorded in writing by the pharmacist and the record so  
65 made by the pharmacist shall constitute the original prescrip-  
66 tion to be filed by the pharmacist. A pharmacist receiving  
67 a prescription by word of mouth, telephone or other means  
68 of communication from an authorized Type A physician  
69 assistant shall require a copy of the list of drugs approved  
70 under the job description of such Type A physician assistant  
71 prior to accepting such orders. All such descriptions shall be

72 preserved on file for a period of five years, subject to in-  
73 spection by the proper officer of the law. The above shall  
74 apply except for narcotic prescriptions, when all narcotic  
75 laws and regulations must be compiled with.

76 (7) The term "cosmetic," which shall be held to include  
77 "dentifrice" and "toilet article," means (a) articles intended  
78 to be rubbed, poured, sprinkled or sprayed on, introduced  
79 into, or otherwise applied to the human body, or any part  
80 thereof for cleansing, beautifying, promoting attractiveness  
81 or altering the appearance, and (b) articles intended for use  
82 as a component of any such articles, except that such term shall  
83 not include soap.

**§30-5-12b. Definitions; selection of generic drug products.**

1 (a) As used in this section:

2 (1) "Brand name" means the proprietary or trade name  
3 selected by the manufacturer and placed upon a drug or drug  
4 product, its container, label or wrapping at the time of pack-  
5 aging.

6 (2) "Generic name" means the official title of a drug or  
7 drug combination for which a new drug application, or an  
8 abbreviated new drug application, has been approved by the  
9 United States food and drug administration and is in effect.

10 (3) "Substitute" means to dispense without the prescriber's  
11 express authorization a therapeutically equivalent generic drug  
12 product in the place of the drug ordered or prescribed.

13 (4) "Equivalent" means drugs or drug products which are  
14 the same amounts of identical active ingredients and same  
15 dosage form, and which will provide essentially the same  
16 therapeutic efficacy and toxicity when administered to an  
17 individual.

18 (5) "Practitioner" means a physician, an authorized Type  
19 A physician assistant at the direction of his or her super-  
20 vising physician in accordance with the provisions of section  
21 sixteen, article three of this chapter, osteopath, dentist, veter-  
22 inarian, podiatrist, optometrist or any other person duly licens-

23 ed to practice and to prescribe drugs under the laws of this  
24 state.

25 (b) A pharmacist who receives a prescription for a brand  
26 name drug or drug product shall substitute a less expensive  
27 equivalent generic name drug or drug product unless in the  
28 exercise of his or her professional judgment the pharmacist  
29 believes that the less expensive drug is not suitable for the  
30 particular patient: *Provided*, That no substitution may be made  
31 by the pharmacist where the prescribing practitioner indicates  
32 that, in his or her professional judgment, a specific brand  
33 name drug is medically necessary for a particular patient.  
34 Every drug prescription order shall contain an instruction on  
35 whether or not an equivalent generic name drug or drug  
36 product may be substituted.

37 If a written prescription is involved, the prescription or  
38 chart order form shall have two signature lines at opposite  
39 ends on the bottom of the form. Under the signature line at  
40 the left side shall be clearly printed or written the words  
41 "Brand Necessary" or words of similar purport which clearly  
42 indicate the practitioners' intent to prohibit substitution. Under  
43 the signature line at the right side shall be clearly printed the  
44 words "Generic Equivalent Permitted." A written prescription  
45 order not in the form hereinabove prescribed shall be construed  
46 as permitting the pharmacist to substitute an equivalent generic  
47 name drug or drug product except where the prescribing prac-  
48 titioner has indicated in writing his or her intent that the phar-  
49 macist not substitute an equivalent generic name drug or drug  
50 product.

51 If an oral prescription order is involved, the prescribing  
52 practitioner or his or her agent shall indicate to the pharmacist  
53 whether or not an equivalent generic name drug or drug pro-  
54 duct may be substituted. The pharmacist shall note the in-  
55 structions on the file copy of the prescription or chart order  
56 form.

57 (c) No person may by trade rule, work rule, contract, or  
58 in any other way prohibit, restrict, limit or attempt to prohibit,  
59 restrict or limit the making of a generic name substitution  
60 under subsection (b) of this section. No employer or his or

61 her agent may use coercion or other means to interfere with  
62 the professional judgment of the pharmacist in deciding which  
63 generic name drugs or drug products shall be stocked or sub-  
64 stituted: *Provided*, That this section shall not be construed to  
65 permit the pharmacist to generally refuse to substitute less ex-  
66 pensive therapeutically equivalent generic drugs for brand  
67 name drugs, and that any pharmacist so refusing shall be  
68 subject to the penalties prescribed in section twenty-two,  
69 article five, chapter thirty of this code.

70 (d) A pharmacist may substitute a drug under subsection  
71 (b) of this section only where there will be a savings to the  
72 buyer. Where substitution is proper under subsection (b), or  
73 where the practitioner prescribes the drug by generic name, the  
74 pharmacist shall, consistent with his or her professional judg-  
75 ment, dispense the lowest retail cost, effective brand which is  
76 in stock.

77 (e) All savings in the retail price of the prescription shall  
78 be passed on to the purchaser; these savings shall be equal to  
79 the difference between the retail price of the brand name  
80 product and the customary and usual price of the generic  
81 product substituted therefor: *Provided*, That in no event shall  
82 such savings be less than the difference in acquisition cost of  
83 the brand name product prescribed and the acquisition cost  
84 of the substituted product.

85 (f) Each pharmacy shall maintain a record of any substitu-  
86 tion of an equivalent generic name drug product for a pre-  
87 scribed brand name drug product on the file copy of a written  
88 or oral prescription or chart order. Such record shall include  
89 the manufacturer and generic name of the drug product  
90 selected.

91 All drugs shall be labeled in accordance with the instruc-  
92 tions of the practitioner.

93 Unless the practitioner directs otherwise, the prescription  
94 label on all drugs dispensed by the pharmacist shall indicate  
95 the generic name using abbreviations if necessary and the  
96 name of the manufacturer. The same notation will be made on  
97 the original prescription retained by the pharmacist.

98 (g) A pharmacist may not dispense a product under the  
99 provisions of this section unless the manufacturer has shown  
100 that the drug has been manufactured with the following  
101 minimum good manufacturing standards and practices by:

102 (1) Labeling products with the name of the original manu-  
103 facturer and control number;

104 (2) Maintaining quality control standards equal to or great-  
105 er than those of the United States food and drug administra-  
106 tion;

107 (3) Marking products with identification code or mono-  
108 gram; and

109 (4) Labeling products with an expiration date.

110 (h) The West Virginia board of pharmacy shall establish  
111 by rule a formulary of generic type and brand name drug  
112 products which are determined by the board to demonstrate  
113 significant biological or therapeutic inequivalence and which,  
114 if substituted, would pose a threat to the health and safety  
115 of patients receiving prescription medication. The formulary  
116 shall be promulgated by the board within ninety days of the  
117 date of passage of this section, and may be amended in ac-  
118 cordance with the provisions of chapter twenty-nine-a of  
119 this code.

120 (i) No pharmacist shall substitute a generic named thera-  
121apeutically equivalent drug product for a prescribed brand  
122 name drug product if the brand name drug product or the  
123 generic drug type is listed on the formulary established by  
124 the West Virginia board of pharmacy pursuant to this article,  
125 or is found to be in violation of the requirements of the  
126 United States food and drug administration.

127 (j) Any pharmacist who substitutes any drug shall, either  
128 personally or through his or her agent, assistant or employee,  
129 notify the person presenting the prescription of such substi-  
130 tution. The person presenting the prescription shall have the  
131 right to refuse the substitution. Upon request the pharmacist  
132 shall relate the retail price difference between the brand name  
133 and the drug substituted for it.

134 (k) Every pharmacy shall post in a prominent place that  
135 is in clear and unobstructed public view, at or near the place  
136 where prescriptions are dispensed, a sign which shall read:  
137 "West Virginia law requires pharmacists to substitute a less  
138 expensive generic named therapeutically equivalent drug for  
139 a brand name drug, if available, unless you or your physician  
140 direct otherwise." The sign shall be printed with lettering of  
141 at least one and one-half inches in height with appropriate  
142 margins and spacing as prescribed by the West Virginia board  
143 of pharmacy.

144 (l) The West Virginia board of pharmacy shall promulgate  
145 rules and regulations setting standards for substituted drug  
146 products, obtaining compliance with the provisions of this  
147 section and enforcing the provisions of this section. Any per-  
148 son shall have the right to file a complaint with the West Vir-  
149 ginia board of pharmacy regarding any violation of the pro-  
150 visions of this article. Such complaints shall be investigated by  
151 the board of pharmacy.

152 Fifteen days after the board has notified, by registered  
153 mail, a person, firm, corporation or copartnership that such  
154 person, firm, corporation or copartnership is suspected of  
155 being in violation of a provision of this section, the board shall  
156 hold a hearing on the matter. If, as a result of the hearing, the  
157 board determines that a person, firm, corporation or copart-  
158 nership is violating any of the provisions of this section, it may,  
159 in addition to any penalties prescribed by section twenty-two  
160 of this article, suspend or revoke the permit of any person,  
161 firm, corporation or copartnership to operate a pharmacy or  
162 drugstore.

163 (m) No pharmacist complying with the provisions of this  
164 section shall be liable in any way for the dispensing of a generic  
165 named therapeutically equivalent drug, substituted under the  
166 provisions of this section, unless the generic named therapeu-  
167 tically equivalent drug was incorrectly substituted.

168 In no event where the pharmacist substitutes a drug under  
169 the provisions of this section shall the prescribing physician  
170 be liable in any action for loss, damage, injury or death of any



171 person occasioned by or arising from the use of the substitute  
172 drug unless the original drug was incorrectly prescribed.

173 Failure of a practitioner to specify that a specific brand  
174 name is necessary for a particular patient shall not constitute  
175 evidence of negligence unless the practitioner had reasonable  
176 cause to believe that the health of the patient required the use  
177 of a certain product and no other.

178 (n) This section shall take effect on the first day of July,  
179 one thousand nine hundred seventy-eight.

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## CHAPTER 142

H. B. 1939—By Delegate Bird and Delegate Artrip)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-b, relating to requiring patient and dentist identification on dentures; and providing penalties.

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

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

### ARTICLE 4. DENTISTS, DENTAL HYGIENISTS AND DENTAL CORPORATIONS.

#### §30-4-2b. Denture identification; penalty.

1 Every dental laboratory as defined in section two-a of this  
2 article and every licensed dentist as defined by this article  
3 who engages in dental technological work and who manu-  
4 factures any full upper or lower set of prosthetic dentures  
5 to be used as a substitute for the upper or lower set of human  
6 teeth shall place or cause to be placed upon the dentures,

7 the name of the patient for whom the dentures are manu-  
 8 factured, and the initials of the dentist's state of practice and  
 9 license identification number. This information shall be  
 10 affixed to these dentures in a nonremovable manner.

11 Any dental laboratory or dentist who fails to comply with  
 12 the provisions of this section is guilty of a misdemeanor,  
 13 and, upon conviction thereof, shall be subject to the penalties  
 14 set forth in section eighteen of this article for practicing  
 15 dentistry or dental hygiene without complying with the pro-  
 16 visions of this article.

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## CHAPTER 143

(H. B. 1428—By Delegate Schifano)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six and thirteen, article six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the examination, registration and renewal fees for funeral directors and embalmers; disposition of fees; report to governor; license to operate a funeral establishment; application and qualification for license; renewal; fees.

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

That sections six and thirteen, article 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 6. EMBALMERS AND FUNERAL DIRECTORS.**

§30-6-6. Examination, registration and renewal fees; disposition of fees; report to governor.

§30-6-13. License required to operate funeral establishment; application and qualifications for license; renewal; fee; manager.

**§30-6-6. Examination, registration and renewal fees; disposition of fees; report to governor.**

1 The examination fee for a funeral director's license shall

2 be one hundred dollars and shall be remitted at the time the  
3 application for a funeral director's license is submitted to the  
4 board.

5 The examination fee for an embalmer's license shall be one  
6 hundred dollars and shall be remitted at the time the appli-  
7 cation for an embalmer's license is submitted to the board.

8 All the licenses and certificates of registration shall expire  
9 on the thirtieth day of June of each calendar year and the  
10 renewal date for all licenses and certificates shall be the first  
11 day of July of each calendar year.

12 The annual renewal fee for embalmer's license, funeral di-  
13 , rector's license, assistant funeral director's license or appren-  
14 tice registration shall be fifteen dollars and shall be paid on or  
15 before the first day of July of each calendar year.

16 Any person who has been duly licensed as a funeral director  
17 or as an embalmer under the laws of this state, but who fails  
18 to renew his license within ninety days after the expiration  
19 date for renewals, may file an application for a renewal of  
20 his license, without examination, upon payment of a penalty  
21 of ten dollars and the required renewal fee.

22 Any person who has been duly licensed as a funeral director  
23 or as an embalmer under the laws of this state, but who fails  
24 to renew his license within one year after the expiration date  
25 for renewals, may file an application for a renewal of his  
26 license, without examination, upon payment of a penalty of  
27 twenty-five dollars and the required renewal fee.

28 A funeral director or an embalmer whose license has lapsed  
29 one year or more shall make application to the board for a  
30 new license in compliance with the provisions of this article  
31 relating to unlicensed persons.

32 Any person who has been duly licensed as an assistant  
33 funeral director and fails to renew his license within ninety days  
34 after the expiration date for renewal may file an application  
35 for renewal of his license upon payment of a penalty of ten  
36 dollars and the required renewal fee. Otherwise, after the said  
37 period of ninety days, his license will automatically be can-  
38 celed.

39 Any person who has been duly registered as an apprentice  
40 embalmer or apprentice funeral director and fails to renew  
41 his registration within ninety days after the expiration date  
42 for renewals may file an application for such renewal upon  
43 payment of a penalty of two dollars and the required renewal  
44 fee. Otherwise, after the said period of ninety days, his  
45 registration will automatically be canceled.

46 All fees and other moneys received by the board pursuant  
47 to the provisions of this article shall be kept in a separate  
48 fund and expended solely for the purposes of this article.  
49 After expenditures for the fiscal year, of the remaining moneys,  
50 all sums in excess of ten thousand dollars in the separate fund  
51 shall revert to the general fund of the state. The compensation  
52 provided by this article and all expenses incurred the payment  
53 of which is authorized under this article shall be paid from  
54 this separate fund. No compensation or expense incurred  
55 under this article shall be a charge against the general funds  
56 of the state.

**§30-6-13. License required to operate funeral establishment; ap-  
plication and qualifications for license; renewal; fee;  
manager.**

1 On or before July one, one thousand nine hundred sixty-  
2 nine, every funeral establishment operating in West Virginia  
3 shall obtain a license for the succeeding fiscal year beginning  
4 July one, one thousand nine hundred sixty-nine, as provided  
5 for in this section.

6 An application for a license to operate a funeral establish-  
7 ment shall be in writing and verified on a form provided by  
8 the board and shall be accompanied by a fee as herein provid-  
9 ed, and upon receipt of the same, the board shall forthwith  
10 issue or renew a license to operate a funeral establishment.  
11 Such application to operate a funeral establishment shall be  
12 made by any person, partnership, association, corporation,  
13 organization or fiduciary having controlling interest in such  
14 funeral establishment.

15 Such application shall be signed by the applicant and by  
16 the individual who is duly licensed as a funeral director,  
17 and who shall be in charge and responsible for all transactions

18 conducted and services performed therein. If such funeral es-  
19 tablishment is owned by a person who is not licensed as a  
20 funeral director or by a partnership, association, corporation  
21 or other organization, then such owner shall have in his or  
22 its employ and place in charge of such establishment a per-  
23 son who is duly licensed as a funeral director, who shall  
24 manage, conduct and have supervision of the work or business  
25 of such establishment and be responsible therefor.

26 A license to operate a funeral establishment shall expire on  
27 the thirtieth day of June of each calendar year and the re-  
28 newal date for any such license shall be the first day of July  
29 of each calendar year.

30 Each funeral establishment license shall be valid only for one  
31 funeral establishment to be located at a specific street address  
32 or location; the fee to operate the principal establishment shall  
33 be seventy-five dollars per year and the fee to operate each  
34 additional funeral establishment by the same applicant shall  
35 be fifty dollars per year. Each separate funeral establishment  
36 shall have its own license, which license shall be prominently  
37 displayed within the funeral establishment. No additional li-  
38 cense fee shall be charged if during any given year it shall be  
39 necessary to reapply for a license to operate a funeral estab-  
40 lishment at the same or different location.

41 The holder of any funeral establishment license who ceases  
42 to operate the funeral establishment at the location specified  
43 in the application shall, within twenty days thereafter, sur-  
44 render the funeral establishment license to the board and such  
45 license shall be canceled by the board, except that in the  
46 event of the death of an individual who was the holder of a  
47 funeral establishment license, it shall be the duty of such  
48 holder's personal representative to surrender such funeral  
49 establishment license within thirty days of qualifying as such  
50 personal representative. It shall be the duty of any holder of  
51 a funeral establishment license, pursuant to this section, to  
52 notify the board within thirty days if for any reason the  
53 licensed funeral director whose name is signed to the appli-  
54 cation for the issuance thereof, ceases to be employed by such  
55 funeral establishment. Within thirty days after such notifi-  
56 cation, such holder of a funeral establishment license may

57 execute a new application for a funeral establishment license  
58 signed by the applicant and by the licensed funeral director  
59 who shall be in charge of and responsible for all transactions  
60 conducted and services performed within the funeral establish-  
61 ment. Failure to comply with any of these provisions shall be  
62 grounds for revocation of a funeral establishment license.

63 A licensee whose embalmer's license, funeral director's  
64 license or license to operate a funeral establishment has been  
65 revoked under this article shall not operate, either directly or  
66 indirectly, or hold any interest in any funeral establishment.  
67 Nothing herein contained shall prohibit a licensee whose license  
68 has been revoked from leasing any property owned by him or  
69 them for use as a funeral establishment so long as he or they  
70 do not participate in the control or profit of such funeral es-  
71 tablishment otherwise than as a lesser of the premises for a  
72 fixed rental not dependent upon earnings.

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## CHAPTER 144

(H. B. 1808—By Delegate Dalton)

[Passed March 7, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twelve, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fees chargeable by the state board of architects; and providing for fee levels which will enable the state board of architects to pay for actual costs incurred and necessary in carrying out its regulatory examination and registration activities.

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

That section eight, article twelve, 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 12. ARCHITECTS.

#### §30-12-8. Fees.

1 (a) The fee to be paid to the board by an applicant for

2 an examination to determine his fitness to receive a certificate  
3 of registration as a registered architect shall be three hundred  
4 fifty dollars. Any applicant failing to pass an original exami-  
5 nation shall pay a fee of two hundred dollars for any re-  
6 quested reexamination, notwithstanding the provisions of sec-  
7 tion six, article one of this chapter.

8 (b) The fee to be paid to the board by an applicant for  
9 a hand seal and certificate of registration as a registered  
10 architect shall be forty dollars.

11 (c) The fee to be paid to the board for the restoration of  
12 an expired certificate of registration shall be fifty dollars.

13 (d) The fee to be paid to the board upon renewal of a  
14 certificate of registration shall be twenty-five dollars.

15 (e) The fee to be paid to the board by an applicant for a  
16 certificate of registration, who is an architect registered or  
17 licensed under the laws of another state or territory of the  
18 United States, or of a foreign country or province, under  
19 subdivision (b), section four of this article, shall be one  
20 hundred fifty dollars.

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## CHAPTER 145

(H. B. 1319—By Delegate Ashcraft)

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[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend sections eight and nine, article twenty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to physical therapists; issuance of licenses; renewal of licenses; renewal fee; display of license and temporary permits.

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

That sections eight and nine, article twenty, 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 20. PHYSICAL THERAPISTS.**

§30-20-8. Issuance of license; renewal of license; renewal fee; display of license.

§30-20-9. Temporary permits.

**§30-20-8. Issuance of license; renewal of license; renewal fee; display of license.**

1 (a) Whenever the board finds that an applicant meets all  
2 of the requirements of this article for a license to engage  
3 in the practice of physical therapy or to act as a physical  
4 therapy assistant, as the case may be, it shall forthwith issue  
5 to him such license; and otherwise the board shall deny the  
6 same.

7 (b) Every licensee shall renew his license on or before  
8 January one of each year by payment of a fee of thirty-five  
9 dollars in the case of a license to engage in the practice of  
10 physical therapy and twenty dollars in the case of a license  
11 to act as a physical therapy assistant. Any license which  
12 is not so renewed shall automatically lapse. A license which  
13 has lapsed may be renewed within five years of its expiration  
14 date by payment to the board of the appropriate renewal  
15 fee for each year or part thereof during which the license  
16 was not renewed. After the expiration of such five-year  
17 period, a license may be renewed only by complying with the  
18 provisions herein relating to the issuance of an original  
19 license.

20 (c) A licensee desiring to cease engaging in the prac-  
21 tice of physical therapy temporarily or to cease acting  
22 temporarily as a physical therapy assistant shall send a  
23 written notice to the board. Upon receipt of such notice,  
24 the board shall place the name of such person upon the  
25 inactive list. While his name remains on this list, such  
26 person shall not be subject to the payment of any fee and  
27 shall not engage in the practice of physical therapy or act  
28 as a physical therapy assistant, as the case may be, in this  
29 state. When such person again desires to engage in the  
30 practice of physical therapy or to act as a physical therapy  
31 assistant, application for renewal of the license and the  
32 payment of a renewal fee for the then current year shall be  
33 made to the board.



34 (d) The board may deny any application for renewal of a  
35 license for any reason which would justify the denial of an  
36 original application for a license.

37 (e) The board shall prescribe the form of licenses and  
38 each license shall be conspicuously displayed by the licensee  
39 at his principal place of practice, or, in the case of a license  
40 to act as a physical therapy assistant, at his place of em-  
41 ployment.

42 (f) Any license issued under the former provisions of  
43 this article, which license remains unsuspended and unre-  
44 voked, shall be valid and considered for all purposes as  
45 having been issued under the provisions of this article and  
46 may be renewed, suspended or revoked as licenses issued  
47 under the provisions of this article, and any license issued  
48 under the former provisions of this article which has lapsed  
49 or shall hereafter lapse shall be subject to the provisions  
50 of subsection (b) of this section pertaining to the lapse of  
51 a license issued under the provisions of this article and the  
52 renewal thereof.

#### §30-20-9. Temporary permits.

1 (a) Upon proper application and the payment of a non-  
2 refundable fee of thirty-five dollars the board may issue,  
3 without examination, a temporary permit to engage in the prac-  
4 tice of physical therapy in this state:

5 (1) Pending examination, to any applicant who meets the  
6 requirements of subdivisions (1) through (5), subsection  
7 (a), section six of this article, which temporary permit shall  
8 expire thirty days after the board gives written notice of  
9 the results of the examination held next following the issuance  
10 of such temporary permit, but upon such expiration, one  
11 additional temporary permit may be obtained by such applicant,  
12 upon proper application therefor and the payment of a nonre-  
13 fundable fee of thirty-five dollars; and

14 (2) To an applicant who is not a resident of this state  
15 and who meets the requirements of subdivisions (1) through  
16 (5), subsection (a), section six of this article, which tem-  
17 porary permit shall be valid only for a period of ninety days

18 in the calendar year in which issued and such permit may  
19 not be renewed nor another thereof issued to the same  
20 person in the same calendar year.

21 (b) Upon proper application and the payment of a non-  
22 refundable fee of twenty dollars, the board may issue, without  
23 examination, a temporary permit to act as a physical therapy  
24 assistant in this state:

25 (1) Pending examination, to an applicant who meets the  
26 requirements of subdivisions (1) and (2), subsection (b),  
27 section six of this article, which temporary permit shall  
28 expire thirty days after the board gives written notice of the  
29 results of the examination held next following the issuance of  
30 such temporary permit, but upon such expiration, one addi-  
31 tional temporary permit may be obtained by such applicant,  
32 upon proper application therefor and the payment of a non-  
33 refundable fee of ten dollars; and

34 (2) To an applicant who is not a resident of this state and  
35 who meets the requirements of subdivisions (1) and (2), sub-  
36 section (b), section six of this article, which temporary permit  
37 shall be valid only for a period of ninety days in the calendar  
38 year in which issued and such permit may not be renewed nor  
39 another thereof issued to the same person in the same calendar  
40 year.

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## CHAPTER 146

(Com. Sub. for S. B. 310—By Senator Spears and Senator Williams)

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[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

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**AN ACT** to amend and reenact section fifteen, article twenty-six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to delivery of receipt by hearing-aid dealer to person supplied with a hearing aid; information contained on receipt; creating a right of person to whom hearing aid is supplied to return the hearing aid and rescind the purchase agreement within a

certain time; extension of time for certain reasons; reasonable fees for examination and fitting not precluded by exercise of right to return and rescind; and maximum fees for examination and fitting to be set by board.

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

That section 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.**

**§30-26-15. Receipt required to be furnished to a person supplied with hearing aid; information required; right to rescind purchase agreement.**

1 (a) Any person who practices the fitting and sale of  
2 hearing aids shall deliver to each person supplied with a  
3 hearing aid a receipt which shall contain his signature, his  
4 business address and the number of his license; the  
5 specifications as to the make and model of the hearing aid  
6 furnished; the full terms of the sale, including the date upon  
7 which the hearing aid was supplied to the person; the  
8 address of the West Virginia board of hearing-aid dealers;  
9 and the following statement: "Any person supplied with a  
10 hearing aid by a hearing-aid dealer licensed in this state  
11 has the right to return the hearing aid to the dealer within  
12 thirty days after receipt and rescind the purchase  
13 agreement except for reasonable fitting and examination  
14 charges if the hearing aid does not function properly, the  
15 hearing aid cannot be adjusted to satisfactorily correct the  
16 deficiency in the person's hearing or the person is otherwise  
17 dissatisfied with the hearing aid." If a hearing aid which  
18 has been previously sold at retail is sold, the receipt shall be  
19 clearly marked as "used" or "reconditioned," whichever  
20 is applicable, with terms of guarantee, if any.

21 Such receipt shall be in the manner and form as  
22 prescribed by the board in its rules and regulations. Such  
23 rules and regulations shall prescribe the type and size of  
24 print to be used in such receipt and the receipt shall set forth  
25 such additional information as the board may prescribe. A  
26 copy of such receipt shall be retained in the records of the

27 licensee for a period of seven years following the issuance of  
28 such receipt.

29 (b) Each person supplied with a hearing aid by a  
30 hearing-aid dealer licensed pursuant to the provisions of  
31 this article shall have the right to return the hearing aid to  
32 the dealer within thirty calendar days of receipt and rescind  
33 the purchase agreement if the hearing aid does not function  
34 properly, cannot be adjusted to satisfactorily correct the  
35 deficiency in the person's hearing or the person is otherwise  
36 dissatisfied with the hearing aid. If a hearing-aid dealer,  
37 pursuant to being notified by a person to whom he has  
38 supplied a hearing aid that the hearing aid does not  
39 function properly, does not satisfactorily correct the  
40 deficiency in the person's hearing or that the person is  
41 otherwise dissatisfied with the hearing aid, makes an  
42 adjustment to the hearing aid or advises the person to  
43 continue use of the hearing aid for the purpose of becoming  
44 more accustomed thereto or any other reason, the right of  
45 the person to whom the hearing aid was supplied shall be  
46 extended for thirty calendar days following the date upon  
47 which such adjustment was made or advisement was given.

48 (c) An exercise of the right to rescind the purchase  
49 agreement by a person to whom a hearing aid has been  
50 supplied may not preclude the dealer from charging  
51 reasonable fees for examination and fitting. The maximum  
52 fees which may be charged by a hearing-aid dealer for  
53 examination and fitting shall be fixed by the West Virginia  
54 board of hearing-aid dealers by rule and regulation  
55 lawfully promulgated in accordance with the provisions of  
56 chapter twenty-nine-a of this code.

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## CHAPTER 147

(S. B. 337—By Senator Cook, Senator Boettner, Senator Nelson and Senator Chace)

[Passed March 9, 1984; in effect July 1, 1984. Approved by the Governor.]

**AN ACT** to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding

thereto a new article, designated article thirty, relating to the licensing of social workers; purpose; definitions; examining board created; powers and duties; license required; prohibited practices; criminal penalties; license classification; qualifications; exemptions; grounds for disciplinary proceedings; temporary permit; renewal of license; display of license; fees; contributions; privileged communications; open meetings provision; and program termination.

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

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

**ARTICLE 30. SOCIAL WORKERS.**

- § 30-30-1. Purpose.
- § 30-30-2. Definitions.
- § 30-30-3. Board of social work examiners.
- § 30-30-4. License required; penalties; exceptions.
- § 30-30-5. License classification; qualification.
- § 30-30-6. Exemptions from requirements.
- § 30-30-7. Grounds for disciplinary proceedings.
- § 30-30-8. Disciplinary proceedings.
- § 30-30-9. Temporary permit to practice social work.
- § 30-30-10. Renewal of license; display of license.
- § 30-30-11. Fees; contributions.
- § 30-30-12. Privileged communications.
- § 30-30-13. Termination of program by law.

**§ 30-30-1. Purpose.**

1 The Legislature finds that the profession of social work  
2 profoundly affects the lives of the people of this state.

3 The profession of social work exists to provide humane  
4 and effective social services to individuals, families, groups,  
5 communities and society in order that social functioning  
6 may be enhanced and the quality of life improved.

7 Social workers are involved with individuals who are  
8 hurt, vulnerable and having difficulty in areas of their lives  
9 which are extremely sensitive. Failure to help these  
10 individuals, whether through incompetence or ir-  
11 responsibility, is a serious matter. These individual  
12 citizens have the potential to be greatly harmed by the

13 services of ill-prepared and incapable persons acting as  
14 social workers. The economic burden of social services  
15 which do not give effective aid is a serious social problem.

16 It is the purpose of this article to protect the public by  
17 setting standards of qualification, education, training and  
18 experience for those who seek to engage in the practice of  
19 social work and to promote high standards of professional  
20 performance for those engaged in the profession of social  
21 work.

### §30-30-2. Definitions.

1 (a) "Board" means the state board of social work  
2 examiners established by this article.

3 (b) "Social work" means the profession that provides  
4 the formal knowledge base, theoretical concepts, specific  
5 functional skills and essential social values which are used  
6 to implement society's mandate to provide safe, effective  
7 and constructive social services through the professional  
8 activities of helping individuals, groups or communities  
9 enhance or restore their capacity for social functioning, and  
10 preventing or controlling social problems and altering  
11 societal conditions as a means toward enabling people to  
12 attain their maximum potential.

13 (c) "Social worker" means a person who represents  
14 himself or herself to the public by the title "social worker,"  
15 and under this title offers to render or renders services  
16 involving the application of principles, methods and  
17 procedures of the profession of social work to individuals,  
18 families, corporations or the public for financial  
19 compensation: *Provided*, That social workers as defined by  
20 this article, does not mean any person who may voluntarily  
21 serve in an advisory capacity in situations dealing with  
22 social and family matters while not holding himself or  
23 herself out to the public as a social worker.

24 (d) "Social work practice" means the professional  
25 application of social work values, principles and techniques  
26 to one or more of the following ends: Enhancing the  
27 developmental, problem-solving and coping capacities of  
28 people; promoting the effective and humane operations of  
29 systems that provide resources and services to people;

30 linking people with systems that provide them with  
31 resources, services and opportunities; contributing to the  
32 development and improvement of social policy; engaging in  
33 research related to these ends and principles; and  
34 organizations or agencies engaged in such practice. Such  
35 social work interventions are provided to individuals,  
36 families, small groups, organizations, neighborhoods and  
37 communities. The practice of social work is guided by  
38 knowledge of social resources, social systems, human  
39 behavior and social, economic and cultural institutions and  
40 the interaction of all such factors.

**§30-30-3. Board of social work examiners.**

1 (a) For the purpose of carrying out the provisions of this  
2 article, there is hereby created a West Virginia board of  
3 social work examiners, consisting of seven members who  
4 shall be appointed by the governor, subject to the following  
5 requirements:

6 (1) No person may be excluded from serving on the  
7 board by reason of race, sex or national origin;

8 (2) Two members shall be certified social workers, two  
9 members shall be graduate social workers and two  
10 members shall be social workers. All such members must be  
11 licensed under the provisions of this article in accordance  
12 with their respective titles. In addition, there shall be one  
13 member of the board chosen from the general public:  
14 *Provided*, That those members who are appointed by the  
15 governor to serve as the first board after the effective date of  
16 this article shall be persons eligible for the licensing  
17 required under this article: *Provided, however*, That the  
18 member from the general public shall never be required to  
19 be eligible for licensing;

20 (3) The members of the first board to serve after the  
21 effective date of this article shall be appointed within  
22 ninety days thereof;

23 (4) The term of office for each member of the board shall  
24 be three years: *Provided*, That one of the members of the  
25 first board to serve after the effective date of this article  
26 shall serve a term of two years, three of them shall serve a  
27 term of three years and the remaining three shall serve a

28 term of four years: *Provided, however,* That no member  
29 shall serve more than four consecutive years; and

30 (5) The governor shall, whenever there is a vacancy on  
31 the board due to circumstances other than the expiration of  
32 the term of a member, appoint another member with the  
33 same qualifications as the member who has vacated to serve  
34 the duration of the unexpired term.

35 For the purpose of accepting nominations for the  
36 replacement of a member, the governor shall cause a notice  
37 of the vacancy to be published at least thirty days prior to an  
38 announcement of the replacement member, as a Class I-0  
39 legal advertisement, in accordance with the provisions of  
40 section two, article three, chapter fifty-nine of this code.  
41 The publication area shall be statewide.

42 If the governor fails to make appointment in ninety  
43 days after expiration of any term, the board shall make  
44 the necessary appointment. Each member shall hold office  
45 until the expiration of the term for which such member is  
46 appointed and until a successor shall have been duly  
47 appointed and qualified.

48 (b) Any members of the board may be removed from  
49 office for cause, in accordance with procedures set forth in  
50 this code for the removal of public officials from office.

51 (c) Members of the board shall receive appropriate  
52 compensation, not to exceed the amount specified for  
53 attendance of similar board meetings as provided elsewhere  
54 in this code, for attending meetings of the board. In addition  
55 to such compensation, each member of the board shall be  
56 reimbursed out of moneys appropriated for such purposes,  
57 reasonable expenses and all sums which he or she  
58 necessarily shall expend in the discharge of his or her duties  
59 as a member of the board, not to exceed the prevailing rate  
60 paid to employees of the state: *Provided,* That such compen-  
61 sation and such expenses shall not exceed the amount re-  
62 ceived by the board from licensing fees and penalties imposed  
63 under subdivision (4), subsection (e) of this section.

64 (d) The board shall hold an annual election for the  
65 purpose of electing a chairman, vice chairman and  
66 secretary. The requirements for meetings and management



67 of the board shall be established in regulations  
68 promulgated by the board as required by this article.

69 (e) In addition to the duties set forth in other provisions  
70 of this article, the board shall:

71 (1) Recommend to the Legislature any proposed  
72 modifications to this article;

73 (2) Report to county prosecutors any suspected  
74 violations of this article: *Provided*, That no report shall be  
75 made until the board has given the suspected violator  
76 ninety days written notice of the suspected violation and  
77 the violator has, within such ninety day period, been  
78 afforded an opportunity to respond to the board with  
79 respect to the allegation;

80 (3) Publish an annual report listing the names and  
81 addresses of all persons who have been licensed in  
82 accordance with the provisions of this article as a certified  
83 social worker, graduate social worker or social worker;

84 (4) Establish a fee schedule for the initial examination,  
85 license fee and the annual license renewal;

86 (5) Establish standards and requirements for  
87 continuing education. In establishing these requirements  
88 the board shall consult with professional groups and  
89 organizations representing all levels of practice provided  
90 for in this article and the board shall consider recognized  
91 staff development programs, continuing education  
92 programs offered by colleges and universities having social  
93 work programs approved or accredited by the council on  
94 social work education, and continuing education programs  
95 offered by recognized state and national social work bodies:  
96 *Provided*, That such standards and requirements for  
97 continuing education shall not be construed to alter or  
98 affect in any way the standards and requirements for  
99 licensing as set forth elsewhere in this article; and

100 (6) Conduct its proceedings in accordance with  
101 provisions of article nine-a, chapter six of this code.

**§30-30-4. License required; penalties; exceptions.**

1 (a) After twenty-four months have passed from the

2 effective date of this article, no person may represent that  
3 he or she is a social worker by using such titles as certified  
4 social worker, graduate social worker, social worker or any  
5 other title that includes a facsimile of such words unless he  
6 or she is duly licensed under the provisions of this article or  
7 specifically exempted hereunder; nor may any person  
8 represent himself or herself to be a certified social worker,  
9 graduate social worker or other type of social worker by  
10 adding the letters CSW, GSW, SW or any other letters,  
11 words or insignia which induce or tend to induce the belief  
12 that the person is qualified to engage in the practice of  
13 social work unless the person is licensed in accordance with  
14 the provisions of this article.

15 (b) After twenty-four months have passed from the  
16 effective date of this article, no person may engage in the  
17 private, independent practice of social work unless he or  
18 she is already licensed under this article.

19 (c) Any person violating the provisions of subsection  
20 (a) or (b) of this section is guilty of a misdemeanor, and,  
21 upon conviction thereof, shall be fined not more than five  
22 hundred dollars, or imprisoned in the county jail for a term  
23 not to exceed one year, or both fined and imprisoned.

24 (d) Nothing in this article shall be construed to prevent  
25 duly licensed physicians, surgeons, psychologists,  
26 attorneys, members of the clergy or any other professional  
27 from working within the standards and ethics of their  
28 respective professions and fulfilling their professional  
29 responsibilities: *Provided*, That no such professional may  
30 represent to the public, either by title or training, that he or  
31 she is engaged in the practice of social work: *Provided*,  
32 *however*, That any student enrolled in a recognized  
33 program of study leading to a social work degree may  
34 practice only under the supervision of a social worker duly  
35 licensed in accordance with the provisions of this article.

36 Nothing in this article shall be construed to prevent any  
37 person from volunteering his or her services in a manner as  
38 defined in subsection (c), section two of this article.

### §30-30-5. License classification; qualification.

1 The board shall issue a license as a certified social worker,  
2 graduate social worker or social worker.

3 (a) The board shall issue a license as a certified social  
4 worker to an applicant who:

5 (1) Has a doctorate or master's degree from a school of  
6 social work accredited by the council on social work  
7 education;

8 (2) Has completed a minimum of two years experience  
9 in the practice of social work after having received a  
10 master's degree in social work;

11 (3) Has received certification by the academy of  
12 certified social workers or has passed an examination  
13 approved by the board for certification purposes;

14 (4) Has satisfied the board that he or she merits the  
15 public trust, as evidenced by three letters of  
16 recommendation from persons not related to the applicant  
17 and a sworn statement from the applicant indicating he or  
18 she has never been convicted of a felony involving moral  
19 turpitude; and

20 (5) In lieu of the foregoing requirements, any person  
21 who has been continuously employed for seven years as a  
22 social worker under the supervision of any certified social  
23 worker; has satisfactorily completed fifty-six hours of  
24 graduate social work study as accredited by the council on  
25 social work education; has passed an examination  
26 approved by the board for certification purposes; and has  
27 satisfied the board that he or she merits the public trust, as  
28 evidenced by three letters of recommendation from persons  
29 not related to the applicant and a sworn statement from the  
30 applicant indicating that he or she has never been convicted  
31 of a felony involving moral turpitude, may be licensed by  
32 the board as a certified social worker: *Provided*, That the  
33 board may exempt any applicant for licensing from specific  
34 hours of social work curriculum where the applicant has  
35 demonstrated to the satisfaction of the board a proficient  
36 knowledge of the subject matter contained in the particular  
37 course of social work curriculum to be exempted.

38 (b) The board shall issue a license as a graduate social  
39 worker to an applicant who:

40 (1) Has a master's degree in social work from a school of

41 social work accredited by the council on social work  
42 education;

43 (2) Has passed an examination approved by the board;

44 (3) Has satisfied the board that he or she merits the  
45 public trust, as evidenced by three letters of  
46 recommendation from persons not related to the applicant  
47 and a sworn statement from the applicant indicating he or  
48 she has never been convicted of a felony involving moral  
49 turpitude; and

50 (4) In lieu of the foregoing requirements, any person  
51 who has been continuously employed for five years as an  
52 apprentice social worker under the supervision of any  
53 certified social worker; has satisfactorily completed forty-  
54 five graduate hours of social work study as accredited by  
55 the council on social work education; has passed an  
56 examination approved by the board; and has satisfied the  
57 board that he or she merits the public trust, as evidenced by  
58 three letters of recommendation from persons not related to  
59 the applicant and a sworn statement from the applicant  
60 indicating he or she has never been convicted of a felony  
61 involving moral turpitude, may be licensed by the board as  
62 a graduate social worker: *Provided*, That the board may  
63 exempt any applicant for licensing from specific hours of  
64 social work curriculum where the applicant has  
65 demonstrated to the satisfaction of the board a proficient  
66 knowledge of the subject matter contained in the particular  
67 course of social work curriculum to be exempted.

68 (c) The board shall issue a license as a social worker to  
69 an applicant who:

70 (1) Has a baccalaureate degree in social work from a  
71 program accredited by the council on social work  
72 education;

73 (2) Has passed an examination approved by the board;

74 (3) Has satisfied the board that he or she merits the  
75 public trust, as evidenced by three letters of  
76 recommendation by persons not related to the applicant  
77 and a sworn statement from the applicant indicating he or  
78 she has never been convicted of a felony involving moral  
79 turpitude; and

80 (4) In lieu of the foregoing requirements, any person  
81 who has been continuously employed for four years as a  
82 social worker under the supervision of any certified social  
83 worker; has satisfactorily completed thirty-six hours of  
84 social work study as accredited by the council on social  
85 work education; has passed an examination approved by  
86 the board; and has satisfied the board that he or she merits  
87 the public trust, as evidenced by three letters of  
88 recommendation from persons not related to the applicant  
89 and a sworn statement from the applicant indicating he or  
90 she has never been convicted of a felony involving moral  
91 turpitude, may be licensed by the board as a social worker:  
92 *Provided*, That the board may exempt any applicant for  
93 licensing from specific hours of social work curriculum  
94 where the applicant has demonstrated to the satisfaction of  
95 the board a proficient knowledge of the subject matter  
96 contained in the particular course of social work  
97 curriculum to be exempted.

**§30-30-6. Exemptions from requirements.**

1 (a) From the effective date of this article to twenty-four  
2 months hence, an applicant shall be exempt from the  
3 education and examination requirements for licensure as a  
4 certified social worker, as required by this section and  
5 section four of this article, if he or she satisfies the board  
6 that he or she holds a doctorate or master's degree in social  
7 work, or a doctorate or master's degree in a field related to  
8 social work, and that he or she has been engaged, for at least  
9 two years of the five years immediately preceding the date  
10 of the license application, in the practice for which the  
11 examination would otherwise be required, then the  
12 applicant shall become so licensed without additional  
13 educational and examination requirements.

14 (b) From the effective date of this article to twenty-four  
15 months hence, an applicant shall be exempt from the  
16 education and examination requirements for licensure as a  
17 social worker, as required by this section and section four of  
18 this article, if he or she satisfies the board that he or she has  
19 been actively engaged, for at least two years of the five years  
20 immediately preceding the date of the license application,  
21 in the practice for which the examination would otherwise

22 be required, then the applicant shall become so licensed  
23 without additional educational and examination  
24 requirements.

25 (c) An applicant shall be exempted from the  
26 requirement of any examination provided herein if:

27 (1) The applicant satisfies the board that he or she is  
28 licensed under the laws of a state or territory of the United  
29 States that impose substantially the same requirements as  
30 this article; or

31 (2) The applicant has taken and passed an examination  
32 similar to that for which exemption hereunder is sought,  
33 pursuant to the laws of a state or territory of the United  
34 States.

35 (d) All social workers employed by county boards of  
36 education shall not be subject to the licensing requirements  
37 of this article, but shall continue to be certified by the state  
38 board of education.

**§30-30-7. Grounds for disciplinary proceedings.**

1 (a) The board may refuse to issue or renew a license, or  
2 may suspend or revoke an existing license. The  
3 determination shall be made after a hearing and an  
4 opportunity to be heard has been afforded the applicant or  
5 licensee. The determination may be made by the board upon  
6 proof that the person has engaged in unprofessional  
7 conduct within the last five years, including, but not limited  
8 to, the following:

9 (1) Has been convicted of a felony;

10 (2) Is unable to perform the functions of his or her  
11 licensed title by reason of mental or physical illness or some  
12 other infirmity or impairment;

13 (3) Has been grossly negligent or exhibited  
14 unprofessional or unethical conduct in the practice of social  
15 work;

16 (4) Has assisted or participated with a person not  
17 licensed under this article in the false representation that  
18 the person is licensed;

19 (5) Has failed to obtain a license renewal after  
20 expiration or revocation of same but has continued to  
21 represent that he or she is duly licensed hereunder;

22 (6) Has been found guilty by the board of unprofessional  
23 conduct in accordance with the rules and regulations  
24 promulgated by the board;

25 (7) Has obtained or attempted to obtain a license or  
26 renewal thereof by bribery or false representations;

27 (8) Has knowingly made a false statement in connection  
28 with any application required under this article; or

29 (9) Has knowingly made a false statement on any form  
30 or written statement submitted to the board.

31 (b) Although the board has the authority to refuse to  
32 issue or renew, or to revoke or suspend a license, the  
33 intention of this article is not to prohibit the practice of  
34 social work by competent and qualified individuals, but  
35 rather the intention is to protect the general public from the  
36 unprofessional practice of social work.

**§30-30-8. Disciplinary proceedings.**

1 All hearings with respect to any disciplinary action shall  
2 be conducted by the board and any decisions shall be made  
3 upon a majority vote of the board members. All hearings  
4 shall be stenographically recorded. The applicant or  
5 licensee shall be given twenty days notice of the hearing  
6 date and the issue pending before the board. This notice  
7 shall be by registered mail, return receipt requested, or by  
8 personal service. For purposes of the hearing, the applicant  
9 or licensee shall be afforded: (1) The right to representation  
10 by legal counsel; (2) the right to cross-examine witnesses;  
11 and (3) the right to present evidence in his or her behalf,  
12 including the right to call witnesses and present docu-  
13 mentary evidence. For purposes of the hearing, the  
14 board has the power to subpoena witnesses and  
15 documentation. The applicant or licensee may apply to the  
16 board for the issuance of a subpoena to secure the  
17 attendance of a witness or to secure any documentary  
18 evidence for the hearing. The board shall notify the  
19 applicant or licensee of its decision within a reasonable

20 time after the hearing. The decision shall be in writing and  
21 shall be forwarded to the applicant or licensee by registered  
22 mail, return receipt requested.

23 Any party adversely affected by the final determination  
24 of the board shall be entitled to judicial review in  
25 accordance with articles five and six, chapter twenty-nine-  
26 a of this code.

**§30-30-9. Temporary permit to practice social work.**

1 The board shall promulgate rules and regulations to  
2 provide for the issuance of a temporary permit to practice  
3 social work to individuals eligible for a license under the  
4 provisions of this article. After the temporary permit has  
5 been issued, it shall expire within sixty days from the date  
6 of the next examination scheduled by the board for the type  
7 of license sought by the applicant: *Provided*, That the  
8 provisions of this section shall not apply to those persons  
9 who shall automatically be licensed on the effective date of  
10 this article as provided in section six of this article.

**§30-30-10. Renewal of license.**

1 All licenses are effective on the date of issuance from the  
2 board and shall expire in twenty-four months and the  
3 number of days remaining in the month after the date the  
4 license was issued. A license may be renewed upon payment  
5 of the renewal fee set by the board and upon execution of a  
6 sworn statement on a form provided by the board indicating  
7 the license has not been revoked and is not currently  
8 suspended. At the time of renewal, each applicant shall  
9 submit satisfactory evidence that he or she has completed  
10 the continuing educational requirements as specified by the  
11 board during the tenure of his or her license: *Provided*, That  
12 the board may waive these requirements upon a showing  
13 that the applicant suffered from a prolonged illness during  
14 the license period or upon proof of other extenuating  
15 circumstances which hindered the completion of the  
16 requirement: *Provided, however*, That no waiver may be  
17 granted in succession.

18 The application for renewal of a license must be made  
19 within sixty days after a license has expired or within sixty  
20 days of a termination or suspension period.



**§30-30-11. Fees; contributions.**

1 All fees shall be established and published by the board of  
2 examiners. All fees collected under this article are not  
3 refundable and shall be deposited in an operating fund of  
4 the board, created in the state treasury. The fund shall be a  
5 revolving fund from which all operation and  
6 administration expenses of the board shall be paid.

7 The board may accept contributions and bequests from  
8 individuals, organizations and corporations. These funds  
9 shall be deposited by the board into the operating fund  
10 heretofore created.

**§30-30-12. Privileged communications.**

1 (a) No person licensed under this statute or an employee  
2 of the licensee may disclose any confidential information he  
3 or she may have acquired from persons consulting him or  
4 her in his or her professional capacity except:

5 (1) With the written consent of the person or persons, or  
6 in the case of death or disability, of his or her personal  
7 representative, other person authorized to sue or the  
8 beneficiary of an insurance policy on his or her life, health  
9 or physical condition;

10 (2) When a communication reveals the contemplation of  
11 a crime or harmful act;

12 (3) When the person waives the privilege by initiating  
13 formal charges against the certified social worker, graduate  
14 social worker or social worker;

15 (4) When the person is a minor under the laws of this  
16 state and the information acquired by the certified social  
17 worker, graduate social worker or social worker indicates  
18 that the minor has been the victim or subject of a crime, and  
19 the certified social worker, graduate social worker or social  
20 worker may be required to testify fully in any examination,  
21 trial or other proceeding in which the commission of a crime  
22 is the subject of inquiry; or

23 (5) Where otherwise required by law.

24 (b) Nothing in this section shall be construed, however,  
25 to prohibit any board licensee from testifying in juvenile

26 proceedings concerning matters of adoption, child abuse,  
 27 child neglect or other matters pertaining to the welfare of  
 28 children.

**§30-30-13. Termination of program by law.**

1 This board and the provisions provided in this article  
 2 shall be terminated on the first day of July, one thousand  
 3 nine hundred eighty-six, unless review of its functions shall  
 4 be undertaken pursuant to the provisions of sections nine,  
 5 ten and eleven, article ten, chapter four of this code.

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## CHAPTER 148

(H. B. 2078—By Delegate Polan)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the salaries of the members of the public service commission together with assignment of new, substantial additional duties embracing new areas and fields of activity under certain legislative enactments; and specifying effective date.

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

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

**ARTICLE 1. GENERAL PROVISIONS.**

**§24-1-3. Commission continued; membership; chairman; compensation.**

1 (a) The public service commission of West Virginia, here-  
 2 tofore established, is continued and directed as provided by  
 3 this chapter, chapter twenty-four-a and chapter twenty-four-b.  
 4 The public service commission may sue and be sued by that  
 5 name. Such public service commission shall consist of three  
 6 members who shall be appointed by the governor with the

7 advice and consent of the Senate. The commissioners shall be  
8 citizens and residents of this state and at least one of them  
9 shall be duly licensed to practice law in West Virginia, of not  
10 less than ten years' actual experience at the bar. No more  
11 than two of said commissioners shall be members of the  
12 same political party. Each commissioner shall, before entering  
13 upon the duties of his office, take and subscribe to the oath  
14 provided by section five, article four of the constitution,  
15 which oath shall be filed in the office of the secretary of state.  
16 The governor shall designate one of the commissioners to  
17 serve as chairman at the governor's will and pleasure. The  
18 chairman shall be the chief administrative officer of the  
19 commission. The governor may remove any commissioner  
20 only for incompetency, neglect of duty, gross immorality, mal-  
21 feasance in office or violation of subsection (c) of this section.

22 (b) The unexpired terms of members of the public service  
23 commission at the time this subsection becomes effective are  
24 continued through the thirtieth day of June, one thousand  
25 nine hundred seventy-nine. In accordance with the provisions  
26 of subsection (a) of this section, the governor shall appoint  
27 three commissioners, one for a term of two years, one for a  
28 term of four years and one for a term of six years, all the  
29 terms beginning on the first day of July, one thousand nine  
30 hundred seventy-nine. All future appointments are for terms  
31 of six years, except that an appointment to fill a vacancy is  
32 for the unexpired term only. The commissioners whose terms  
33 are terminated by the provisions of this subsection are eligible  
34 for reappointment.

35 (c) No person while in the employ of, or holding any  
36 official relation to, any public utility subject to the provisions  
37 of this chapter, or holding any stocks or bonds thereof, or  
38 who is pecuniarily interested therein, may serve as a member  
39 of the commission or as an employee thereof. Nor may any  
40 such commissioners be a candidate for or hold public office,  
41 or be a member of any political committee, while acting as  
42 such commissioner; nor may any commissioner or employee  
43 of said commission receive any pass, free transportation or  
44 other thing of value, either directly or indirectly, from any  
45 public utility or motor carrier subject to the provisions of

46 this chapter. In case any of the commissioners becomes a  
47 candidate for any public office or a member of any political  
48 committee, the governor shall remove him from office and  
49 shall appoint a new commissioner to fill the vacancy created.

50 (d) Effective the first day of July, one thousand nine  
51 hundred eighty-one, and in light of the new, substantial addi-  
52 tional duties embracing new areas placed upon the commis-  
53 sion by Enrolled Senate Bill No. 95, Enrolled Senate Bill  
54 No. 571, and Enrolled House Bill No. 1479, all acts of the  
55 Legislature, regular session, one thousand nine hundred eighty-  
56 one, for the administration of this chapter, chapter twenty-  
57 four-a and chapter twenty-four-b of this code, each commis-  
58 sioner shall receive a salary of thirty-six thousand five hundred  
59 dollars a year to be paid in monthly installments from the  
60 special funds in such amounts as follows:

61 (1) From the public service commission fund collected  
62 under the provisions of section six, article three of this chap-  
63 ter, twenty-eight thousand one hundred dollars;

64 (2) From the public service commission motor carrier fund  
65 collected under the provisions of section six, article six,  
66 chapter twenty-four-a of this code, seven thousand dollars;  
67 and

68 (3) From the public service commission gas pipeline safety  
69 fund collected under the provisions of section three, article  
70 five, chapter twenty-four-b of this code, one thousand four  
71 hundred dollars.

72 In addition to this salary provided for all commissioners,  
73 the chairman of the commission shall receive three thousand  
74 five hundred dollars a year to be paid in monthly install-  
75 ments from the public service commission fund collected  
76 under the provisions of section six, article three of this chapter,  
77 on and after the first day of July, one thousand nine hundred  
78 eighty-one.

79 (e) Effective the first day of July, one thousand nine hun-  
80 dred eighty-four, and in light of the assignment of new,  
81 substantial additional duties embracing new areas and fields  
82 of activity under certain legislative enactments, each com-

83 commissioner shall receive a salary of thirty-nine thousand two  
84 hundred forty dollars a year to be paid in monthly installments  
85 from the special funds in such amounts as follows:

86 (1) From the public service commission fund collected  
87 under the provisions of section six, article three of this chap-  
88 ter, thirty thousand two hundred ten dollars;

89 (2) From the public service commission motor carrier  
90 fund collected under the provisions of section six, article six,  
91 chapter twenty-four-a of this code, seven thousand five hun-  
92 dred twenty-five dollars; and

93 (3) From the public service commission gas pipeline safety  
94 fund collected under the provisions of section three, article  
95 five, chapter twenty-four-b of this code, one thousand five  
96 hundred-five dollars.

97 In addition to this salary provided for all commissioners,  
98 the chairman of the commission shall receive three thousand  
99 five hundred dollars a year to be paid in monthly installments  
100 from the public service commission fund collected under the  
101 provisions of section six, article three of this chapter, on and  
102 after the first day of July, one thousand nine hundred eighty-  
103 four.

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## CHAPTER 149

(Com. Sub. for H. B. 1461—By Delegate Albright)

[Passed March 9, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twelve-a, relating to the powers and duties of the public service commission generally; prohibiting certain acts by public utilities without prior consent of such commission; the power and duty of the commission to review the transfer of control of a public utility; and requiring prior approval of the issuance

of stock by a public utility; and providing certain exceptions thereto.

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

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

**ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**

- §24-2-12. What acts may not be done without consent of commission; consent in advance of exemption of transactions; when sale, etc., of franchises, mergers, etc., void.
- §24-2-12a. Issuance of stock; requirement of applying to commission for orders authorizing issuance; hearing and investigation on application; order; when issuance is void.
- §24-2-12. **What acts may not be done without consent of commission; consent in advance of exemption of transactions; when sale, etc., of franchises, mergers, etc., void.**

1 Unless the consent and approval of the public service com-  
2 mission of West Virginia is first obtained: (a) No public  
3 utility subject to the provisions of this chapter, except rail-  
4 roads other than street railroads, may enter into any con-  
5 tract with any other utility to operate any line or plant of  
6 any other utility subject thereto, nor which will enable such  
7 public utility to operate their lines or plants in connection  
8 with each other, but this shall not be construed to prevent  
9 physical connections between utilities supplying the same  
10 service or commodity, for temporary purposes only, upon  
11 condition, however, that prompt notice thereof be given to  
12 the commission for such action, if any, as it may deem  
13 necessary, and thereafter the commission may require such  
14 connection to be removed or discontinued; (b) no public  
15 utility subject to the provisions of this chapter, except rail-  
16 roads other than street railroads, may purchase, lease, or  
17 in any other manner acquire control, direct or indirect, over  
18 the franchises, licenses, permits, plants, equipment, business

19 or other property of any other utility; (c) no public utility  
20 subject to the provisions of this chapter, except railroads  
21 other than street railroads, may assign, transfer, lease, sell,  
22 or otherwise dispose of its franchises, licenses, permits, plants,  
23 equipment, business or other property or any part thereof;  
24 but this shall not be construed to prevent the sale, lease,  
25 assignment or transfer by any public utility of any tangible  
26 personal property which is not necessary or useful, nor will  
27 become necessary or useful in the future, in the performance  
28 of its duties to the public; (d) no public utility subject to the  
29 provisions of this chapter, except railroads other than street  
30 railroads, may, by any means, direct or indirect, merge or con-  
31 solidate its franchises, licenses, permits, plants, equipment,  
32 business or other property with that of any other public  
33 utility; (e) no public utility subject to the provisions of this  
34 chapter, except railroads other than street railroads, may  
35 purchase, acquire, take or receive any stock, stock certificates,  
36 bonds, notes or other evidence of indebtedness of any other  
37 public utility; (f) no public utility subject to the provisions  
38 of this chapter, except railroads other than street railroads,  
39 may, by any means, direct or indirect, enter into any contract  
40 or arrangement for management, construction, engineering,  
41 supply or financial services or for the furnishing of any other  
42 service, property or thing, with any affiliated corporation,  
43 person or interest; (g) no person or corporation, whether or  
44 not organized under the laws of this state, may acquire either  
45 directly or indirectly a majority of the common stock of  
46 any public utility organized and doing business in this state.

47 The commission may grant its consent in advance or  
48 exempt from the requirements of this section all assignments,  
49 transfers, leases, sales or other disposition of the whole or  
50 any part of the franchises, licenses, permits, plants, equip-  
51 ment, business or other property of any public utility, or any  
52 merger or consolidation thereof and every contract, purchase  
53 of stocks, arrangement, transfer or acquisition of control,  
54 or other transaction referred to in this section, upon proper  
55 showing that the terms and conditions thereof are reason-  
56 able and that neither party thereto is given an undue advant-  
57 age over the other, and do not adversely affect the public  
58 in this state.

59 The commission shall prescribe such rules and regulations  
60 as, in its opinion, are necessary for the reasonable enforce-  
61 ment and administration of this section, including the pro-  
62 cedure to be followed, the notice to be given of any hearing  
63 hereunder, if it deems a hearing necessary, and after such  
64 hearing or in case no hearing is required, the commission  
65 shall, if the public will be inconvenienced thereby, enter such  
66 order as it may deem proper and as the circumstances may  
67 require, attaching thereto such conditions as it may deem  
68 proper, consent to the entering into or doing of the things  
69 herein provided, without approving the terms and conditions  
70 thereof, and thereupon it shall be lawful to do the things  
71 provided for in such order.

72 Every assignment, transfer, lease, sale or other disposition  
73 of the whole or any part of the franchises, licenses, permits,  
74 plant, equipment, business or other property of any public  
75 utility, or any merger or consolidation thereof and every  
76 contract, purchase of stock, arrangement, transfer or ac-  
77 quisition of control or other transaction referred to in this  
78 section made otherwise than as hereinbefore provided shall  
79 be void to the extent that the interests of the public in this  
80 state are adversely affected, but this shall not be construed  
81 to relieve any utility from any duty required by this section.

**§24-2-12a. Issuance of stock; requirement of applying to commis-  
sion for orders authorizing issuance; hearing and  
investigation on application; order; when issuance is  
void.**

1 The power of public utilities to issue stocks and stock certif-  
2 icates or other evidence of interest or ownership is a special  
3 privilege, the right of supervision, regulation, restriction and  
4 control of which is vested in the state, and such power shall  
5 be exercised as provided by law under such rules and regula-  
6 tions as the commission may prescribe.

7 No public utility may issue stocks and stock certificates, or  
8 other evidence of interest or ownership unless, in addition to  
9 the other requirements of law, it shall first have secured from  
10 the commission an order authorizing the issue, stating the  
11 amount thereof and the purposes to which the issue or the  
12 proceeds thereof are to be applied, and that, in the opinion



13 of the commission, the issue is reasonably required for the  
14 purposes specified in the order: *Provided*, That the issuance  
15 of stocks and stock certificates or other evidence of interest  
16 or ownership by a corporation which devotes one or more of  
17 its divisions to the provision of a public service shall be  
18 exempted from the requirements hereof when the gross reve-  
19 nues generated by all such divisions represent less than  
20 twenty-five percent of the gross revenues generated by the  
21 corporation.

22 Preferred stock which has no voting rights for the election  
23 of directors or which has such voting rights only upon the  
24 failure of the corporation to meet its obligation to pay divi-  
25 dends on such stock and, in either case, which preferred stock  
26 is not capable of conversion into common equity shall not  
27 be subject to the provisions of this section.

28 To enable the commission to determine whether it will  
29 issue such order, the commission may hold a hearing and may  
30 make such additional inquiry or investigation, examine such  
31 witnesses, books, papers, documents and contracts and re-  
32 quire the filing of such data as it deems of assistance. The  
33 commission may by its order grant permission for the issue  
34 of such stocks or stock certificates or other evidence of inter-  
35 est or ownership in the amount applied for, or in a lesser  
36 amount, or refuse such permission, or grant it subject to such  
37 conditions as it deems reasonable and necessary. All stock  
38 and every stock certificate or other evidence of interest or  
39 ownership of a public utility issued without an order of the  
40 commission authorizing the issue thereof or not conforming in  
41 its provisions to any of the provisions which it is required by  
42 the order of authorization to contain is void.

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## CHAPTER 150

(Com. Sub. for S. B. 338—By Senator Boettner)

[Passed March 8, 1984; 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-b of the code of West Virginia, one

thousand nine hundred thirty-one, as amended; to amend and reenact sections one and four, article two of said chapter; and to amend and reenact sections one, two and three, article five of said chapter, all relating to the authority of the public service commission to regulate pipeline safety; permitting the public service commission to regulate hazardous liquid pipelines in accordance with the provisions of the "Hazardous Liquid Pipeline Safety Act of 1979"; and limiting the commission to the regulation of hazardous liquid pipelines to the extent hazardous liquids are defined by regulations lawfully promulgated under such act of 1979.

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

That sections one and two, article one, chapter twenty-four-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one and four, article two of said chapter be amended and reenacted; and that sections one, two and three, article five of said chapter be amended and reenacted, all to read as follows:

**Article**

1. Purpose and Definitions.
2. Powers and Duties of the Commission.
5. Employees of Commission; Funding.

**ARTICLE 1. PURPOSE AND DEFINITIONS.**

§24B-1-1. Purpose.

§24B-1-2. Definitions.

**§24B-1-1. Purpose.**

- 1 It is hereby declared to be the purpose and policy of the
- 2 Legislature in enacting this chapter to empower the public
- 3 service commission of West Virginia, in addition to all other
- 4 powers conferred and duties imposed upon it by law, to
- 5 prescribe and enforce safety standards for pipeline
- 6 facilities as hereinafter defined, and to regulate safety
- 7 practices of persons engaged in the transportation of gas or
- 8 hazardous liquids as hereinafter defined.

**§24B-1-2. Definitions.**

- 1 When used in this chapter:

- 2 (1) "Person" means any individual, firm, joint venture,  
3 partnership, corporation, association, state, municipality,  
4 cooperative association or joint-stock association, and  
5 includes any trustee, receiver, assignee or personal  
6 representative thereof;
- 7 (2) "Gas" means natural gas, flammable gas or gas  
8 which is toxic or corrosive;
- 9 (3) "Transportation of gas" means the gathering,  
10 transmission or distribution of gas by pipeline or its  
11 storage;
- 12 (4) "Hazardous liquid" means:
- 13 (a) Petroleum or any petroleum product; and
- 14 (b) Any substance or material which is in liquid state  
15 (excluding liquified natural gas) when transported by  
16 pipeline facilities and which, as determined by the  
17 commission, may pose an unreasonable risk to life or  
18 property when transported by pipeline facilities: *Provided*,  
19 That a hazardous liquid as herein defined shall not be  
20 construed so as to include or permit the regulation of any  
21 substance transported through pipeline or otherwise when  
22 used in the operation of coal mines, coal processing plants  
23 or coal slurry pipelines: *Provided, however*, That the  
24 commission shall not determine that any substance or  
25 material is a hazardous liquid under this section if the  
26 Secretary has not determined that the substance or material  
27 is a hazardous liquid under regulations promulgated in  
28 accordance with Section 202(2) of the Hazardous Liquid  
29 Pipeline Safety Act of 1979;
- 30 (5) "Transportation of hazardous liquids" means the  
31 movement of hazardous liquids by pipeline, or their storage  
32 incidental to such movements; except that it shall not  
33 include any such movement through gathering lines in rural  
34 locations or on shore production, refining or manufacturing  
35 facilities or storage or in-plant piping systems associated  
36 with any of such facilities;
- 37 (6) "Pipeline facilities" means, without limitation, new  
38 and existing pipe, pipe rights-of-way and any equipment,  
39 facility, or building used in the transportation of gas or the

40 treatment of gas during the course of transportation, or  
41 used in the transportation of hazardous liquid or the  
42 treatment of hazardous liquid during the course of  
43 transportation: but "rights-of-way" as used in this chapter  
44 does not authorize the commission to prescribe the location  
45 or routing of any pipeline facility;

46 (7) "Municipality" means a city, county or any other  
47 political subdivision of the state;

48 (8) "Interstate transmission facilities" means facilities  
49 used in the transportation of gas which are subject to the  
50 jurisdiction of the federal power commission under the act  
51 of Congress known as the Natural Gas Act;

52 (9) "Interstate pipeline facilities" means the pipeline  
53 facilities used in the transportation of hazardous liquids in  
54 interstate or foreign commerce;

55 (10) "Director" means the director of the gas pipeline  
56 safety section of the commission;

57 (11) "Commission" means the public service  
58 commission of West Virginia;

59 (12) "Secretary" means the United States secretary of  
60 transportation;

61 (13) "Pipeline company" means a person engaged in the  
62 operation of pipeline facilities or the transportation of gas  
63 or hazardous liquids subject to the provisions of this  
64 chapter;

65 (14) "Act of 1968" means the act of Congress known as  
66 the Natural Gas Pipeline Safety Act of 1968; and

67 (15) "Act of 1979" means the act of Congress known as  
68 the "Hazardous Liquid Pipeline Safety Act of 1979."

## **ARTICLE 2. POWERS AND DUTIES OF THE COMMISSION.**

§24B-2-1. Jurisdiction.

§24B-2-4. Cooperation with the federal government.

### **§24B-2-1. Jurisdiction.**

1 The commission shall have power and authority to  
2 prescribe and enforce safety standards for pipeline

3 facilities, and to regulate safety practices of persons  
4 engaged in the transportation of gas or hazardous liquids,  
5 to the extent permitted by the "Act of 1968" and the "Act of  
6 1979" and any amendments thereto. Such standards may  
7 apply to the design, installation, inspection, testing,  
8 construction, extension, operation, replacement and  
9 maintenance of pipeline facilities. Standards affecting the  
10 design, installation, construction, initial inspection and  
11 initial testing shall not be applicable to pipeline facilities in  
12 existence on the date such standards are adopted.  
13 Whenever the commission shall find a particular facility to  
14 be hazardous to life or property, it shall be empowered to  
15 require the person operating such facility to take such steps  
16 necessary to remove such hazards. Such safety standards  
17 shall be practicable and designed to meet the need for  
18 pipeline safety. In prescribing such standards, the  
19 commission shall consider:

- 20 (a) Relevant available pipeline safety data;
- 21 (b) Whether such standards are appropriate for the  
22 particular type of pipeline transportation;
- 23 (c) The reasonableness of any proposed standards; and
- 24 (d) The extent to which such standards will contribute  
25 to public safety.

**§24B-2-4. Cooperation with the federal government.**

1 The commission shall cooperate with the secretary and  
2 other agencies of the United States in the enforcement of  
3 this chapter and the "Act of 1968" and amendments  
4 thereto; and to this end, the commission shall take such  
5 steps as may be necessary to make annual certifications to  
6 the secretary under section five (a) of the "Act of 1968," and  
7 shall file such certificates with the secretary. The  
8 commission is hereby authorized and empowered (a) to act  
9 as the secretary's agent in the enforcement of the "Act of  
10 1968" and amendments thereto with respect to interstate  
11 transmission facilities; and (b) to accept for the state of  
12 West Virginia, and to expend for the purpose designated,  
13 any funds that may hereafter be made available to the  
14 commission out of the federal treasury by an act or acts of

15 Congress and allocated to this state for the purpose of  
16 carrying out the provisions of this chapter and the "Act of  
17 1968" and amendments thereto.

18 The commission shall further cooperate with the  
19 secretary and other agencies of the United States in the  
20 enforcement of the "Act of 1979" and amendments thereto;  
21 and to this end the commission shall take such steps as may  
22 be necessary to make annual certifications to the secretary  
23 under section two hundred five-a of the "Act of 1979" and  
24 shall file such certificates with the secretary. The  
25 commission is hereby authorized and empowered (a) to act  
26 as the secretary's agent in the enforcement of the "Act of  
27 1979" and amendments thereto with respect to interstate  
28 pipeline facilities; and (b) to accept for the state of West  
29 Virginia, and expend for the purpose designated, any funds  
30 that may hereafter be made available to the commission out  
31 of the federal treasury by an act or acts of Congress and  
32 allocated to this state for the purpose of carrying out the  
33 "Act of 1979" and amendments thereto.

**ARTICLE 5. EMPLOYEES OF COMMISSION; FUNDING.**

§24B-5-1. Employees.

§24B-5-2. Compensation to commissioners.

§24B-5-3. Funding; property and revenue license fees.

**§24B-5-1. Employees.**

1 The commission shall appoint a director of the pipeline  
2 safety section of the public service commission and such  
3 employees as may be necessary to carry out the provisions of  
4 this chapter, and shall fix their respective salaries or  
5 compensation. The commission may designate such  
6 employees as it deems necessary to take evidence at any  
7 hearing held or required by the provisions of this chapter,  
8 which employees are hereby empowered to administer  
9 oaths in all parts of this state so far as the exercise of such  
10 power is properly incidental to the performance of their  
11 duties in connection with the provisions of this chapter.

**§24B-5-2. Compensation to commissioners.**

1 Each member of the commission shall receive a salary in  
2 the amount set forth in section three, article one, chapter

3 twenty-four of this code as compensation for the  
4 administration of this chapter in addition to all other salary  
5 or compensation otherwise provided for by law, to be paid  
6 in monthly installments from the public service commission  
7 pipeline safety fund.

**§24B-5-3. Funding; property and revenue license fees.**

1 (a) Every pipeline company shall pay a special license  
2 fee in addition to those now required by law. The amount of  
3 such fees shall be fixed by the public service commission  
4 and levied by it upon each of such pipeline companies  
5 according to the number of three-inch equivalent pipeline  
6 miles included in its pipeline facilities, and shall be  
7 apportioned among such pipeline companies upon the basis  
8 of the pipeline companies' reports submitted to the  
9 commission in such form as the commission may prescribe,  
10 so as to produce a revenue of not more than three hundred  
11 thousand dollars per annum, which fees shall be paid on or  
12 before the first day of July in each year.

13 (b) Such sums collected under subsection (a) of this  
14 section shall be paid into the state treasury and kept as a  
15 special fund, designated "public service commission  
16 pipeline safety fund," to be appropriated as provided by  
17 law for the purpose of paying the salaries, compensation,  
18 costs and expenses of its employees. Any balance in said  
19 fund at the end of any fiscal year shall not revert to the  
20 treasury, but shall remain in said fund and may be  
21 appropriated as provided in this subsection. All funds  
22 which heretofore were in the "public service commission  
23 gas pipeline safety fund" shall be transferred to the "public  
24 service commission pipeline safety fund."

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## CHAPTER 151

(S. B. 624—Originating in the Senate Committee on Finance)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact article five, chapter five of the  
code of West Virginia, one thousand nine hundred thirty-

one, as amended, relating to granting incremental salary increases to public employees based on years of service.

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

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

**ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.**

§5-5-1. Definitions.

§5-5-2. Granting incremental salary increases based on years of service.

**§5-5-1. Definitions.**

1 For the purposes of this article: (1) "Eligible employee"  
2 means any regular full-time employee of the state or any  
3 spending unit thereof who is eligible for membership in  
4 any state retirement system of the state of West Virginia  
5 or other retirement plan authorized by the state: *Pro-*  
6 *vided*, That the mandatory salary increase required by  
7 this article shall not apply to any faculty employee at  
8 public institutions of higher learning or any employee of  
9 the state whose compensation is fixed by statute or by  
10 statutory schedule, nor shall this article be construed  
11 to mandate an increase in the salary of any elected or  
12 appointed officer of the state; (2) "years of service" means  
13 full years of service as an employee of the state of West  
14 Virginia; (3) "spending unit" means any state office,  
15 department, agency, board, commission, institution, bu-  
16 reau or other designated body authorized to hire em-  
17 ployees.

**§5-5-2. Granting incremental salary increases based on years of service.**

1 Effective for the fiscal year beginning the first day of  
2 July, one thousand nine hundred eighty-five, every eli-  
3 gible employee with three or more years of service shall  
4 receive an annual salary increase equal to thirty-six dol-  
5 lars times the employees' years of service, not to exceed  
6 twenty years of service. In each fiscal year thereafter  
7 and on the first day thereof, each such employee shall



8 receive an annual increment increase of thirty-six dollars  
9 for such fiscal year: *Provided*, That every employee be-  
10 coming newly eligible as a result of meeting the three  
11 years of service minimum requirement on the first day  
12 of July in any fiscal year subsequent to one thousand nine  
13 hundred eighty-five, shall be entitled to the annual salary  
14 increase equal to the aforesaid thirty-six dollars times the  
15 employee's years of service, where he has not theretofore  
16 received the benefit of any such increment computation;  
17 and shall receive a single annual increment increase there-  
18 after of thirty-six dollars for each such subsequent fiscal  
19 year. These incremental increases shall be in addition to  
20 any across-the-board, cost-of-living or percentage salary  
21 increases which may be granted in any fiscal year by the  
22 Legislature. This article shall not be construed to prohibit  
23 other pay increases based on merit, seniority, promotion  
24 or other reason, if funds are available for such other pay  
25 increases: *Provided, however*, That the executive head of  
26 each spending unit shall first grant the herein mandated  
27 increase in compensation to all eligible employees prior  
28 to the consideration of any increases based on merit,  
29 seniority, promotion or other reason.

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## CHAPTER 152

(Com. Sub. for H. B. 1338—By Mr. Speaker, Mr. See)

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[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

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AN ACT to amend and reenact section twenty-one, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, fourteen, sixteen, seventeen, eighteen, twenty-two, twenty-five, thirty-four and thirty-five, article seven-a, chapter eighteen of said code, all relating to the state public employees retirement act and the state teachers retirement system; providing for certain early retirement provisions for both public employees, under their act, and teachers, under

their system, with actuarial reduction of benefits therefor; providing for generally updating the state teachers retirement system including: Defining teacher member and nonteaching member; removing the continuous service requirements from the definition of "present teacher"; amending the definition of "average final salary" to mean the average of the member's five highest fiscal year salaries within the last fifteen years of total service on which contributions were made; allowing exceptions to the limit on contributions by members employed by the West Virginia board of regents at institutions of higher education; removing the requirement that all employer contributions be credited to the employer's accumulation fund; requiring state contributions and employer contributions to the teachers retirement system to be deposited in the employer's accumulation fund; requiring deficits in the benefit fund to be met by transfers from the employer's accumulation fund and, if necessary, from the teachers accumulation fund; requiring all gifts, bequests and interest earnings from investments received by the teachers retirement board to be deposited in the reserve fund; specifying persons who are eligible for prior service pensions; providing increased loans to members and exceptions thereto; and granting service credit toward teachers retirement to cooperative extension service employees employed for thirty hours or more per week and providing for payment.

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

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

**Chapter**

**5. General Powers and Authority of The Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**

**18. Education.**

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF  
THE GOVERNOR, SECRETARY OF STATE AND  
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;  
MISCELLANEOUS AGENCIES, COMMISSIONS,  
OFFICES, PROGRAMS, ETC.**

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT  
ACT.**

**§5-10-21. Deferred retirement and early retirement.**

1 (a) Any member, who has five or more years of credited  
2 service in force, of which at least three years are contributing  
3 service, and who leaves the employ of a participating public  
4 employer prior to his attainment of age sixty years, for any rea-  
5 son except his disability retirement or death, shall be entitled  
6 to an annuity computed according to section twenty-two hereof,  
7 as the said section was in force as of the date of his said  
8 separation from the employ of a participating public employer:  
9 *Provided*, That he does not withdraw his accumulated contri-  
10 butions from the members' deposit fund. His said annuity shall  
11 begin the first day of the calendar month next following the  
12 month in which his application for same is filed with the  
13 board of trustees on or after his attainment of age sixty-two  
14 years.

15 (b) Any member who qualifies for deferred retirement  
16 benefits in accordance with subsection (a) of this section,  
17 and has ten or more years of credited service in force and  
18 who has attained age fifty-five as of the date of his separa-  
19 tion may, prior to the effective date of his retirement, but  
20 not thereafter, elect to receive the actuarial equivalent of his  
21 deferred retirement annuity as a reduced annuity commencing  
22 on the first day of any calendar month between his date of  
23 separation and his attainment of age sixty-two years and pay-  
24 able throughout his life.

25 (c) Any member who qualifies for deferred retirement bene-  
26 fits in accordance with subsection (a) of this section, and  
27 has twenty or more years of credited service in force, may  
28 elect to receive the actuarial equivalent of his deferred  
29 retirement annuity as a reduced annuity commencing on the  
30 first day of any calendar month between his fifty-fifth birth-

31 day and his attainment of age sixty-two years and payable  
32 throughout his life.

33 (d) Notwithstanding any of the other provisions of this  
34 section or of this article and pursuant to regulations pro-  
35 mulgated by the board, any member who has thirty or more  
36 years of credited service in force, at least three of which  
37 are contributing service, and who elects to take early retire-  
38 ment, which for the purposes of this subsection shall mean  
39 retirement prior to age sixty, whether an active employee or  
40 a separated employee at the time of application, shall be  
41 entitled to the full computation of annuity according to sec-  
42 tion twenty-two of this article, as the said section was in force  
43 as of the date of retirement application, but with the reduced  
44 actuarial equivalent of the annuity the member would have  
45 received if his benefit had commenced at age sixty when he  
46 would have been entitled to full computation of benefit without  
47 any reduction.

## CHAPTER 18. EDUCATION.

### ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

- §18-7A-3. Definitions.
- §18-7A-14. Contributions by members.
- §18-7A-16. Transfer of appropriations.
- §18-7A-17. Statement and computation of teachers' service.
- §18-7A-18. Funds created; fund transfers.
- §18-7A-22. Persons eligible for prior service pensions.
- §18-7A-25. Eligibility for retirement allowance.
- §18-7A-34. Loans to members.
- §18-7A-35. Coverage for nonteaching employees; prior service credit.

#### §18-7A-3. Definitions.

1 "Teacher member" includes the following persons, if re-  
2 gularly employed for at least half-time service: (a) Any per-  
3 son employed for instructional service in the public schools  
4 of West Virginia; (b) principals; (c) public school librarians;  
5 (d) superintendents of schools and assistant county superin-  
6 tendents of schools; (e) any county school attendance director  
7 holding a West Virginia teacher's certificate; (f) the executive  
8 secretary of the retirement board; (g) members of the research,  
9 extension, administrative or library staffs of the public schools;  
10 (h) the state superintendent of schools, heads and assistant

11 heads of the divisions under his supervision, or any other  
12 employee thereunder performing services of an educational  
13 nature; (i) employees of the state board of education who  
14 are performing services of an educational nature; (j) any  
15 person employed in a nonteaching capacity by the state board  
16 of education, the West Virginia board of regents, any county  
17 board of education, the state department of education or the  
18 teachers retirement board, if such person was formerly  
19 employed as a teacher in the public schools; (k) all class-  
20 room teachers, principals and educational administrators in  
21 schools under the supervision of the department of cor-  
22 rections, the department of health or the department of human  
23 services; (l) employees of the state board of school finance  
24 if such person was formerly employed as a teacher in the  
25 public schools.

26 "Nonteaching member" means any person, except a teacher  
27 member, who is regularly employed for full-time service by  
28 (a) any county board of education, (b) the state board of  
29 education, (c) the West Virginia board of regents or (d) the  
30 teachers retirement board.

31 "Members of the administrative staff of the public school"  
32 includes deans of instruction, deans of men, deans of women,  
33 and financial and administrative secretaries.

34 "Members of the extension staff" of the public schools in-  
35 cludes every agricultural agent, boys' and girls' club agent,  
36 and every member of the agricultural extension staff whose  
37 work is not primarily stenographic, clerical or secretarial.

38 "Retirement system" means the state teachers retirement  
39 system provided for in this article.

40 "Present teacher" means any person who was a teacher  
41 within the thirty-five years beginning July one, one thousand  
42 nine hundred thirty-four, and whose membership in the  
43 retirement system is currently active.

44 "New entrant" means a teacher who is not a present  
45 teacher.

46 "Present member" means a present teacher who is a mem-  
47 ber of the retirement system.

48 "Total service" means all service as a teacher while a  
49 member of the retirement system since last becoming a member  
50 and, in addition thereto, his credit for prior service, if any.

51 "Prior service" means all service as a teacher completed  
52 prior to July first, one thousand nine hundred forty-one,  
53 and all service of a present member who was employed as a  
54 teacher, and did not contribute to a retirement account be-  
55 cause he was legally ineligible for membership during such  
56 service.

57 "Average final salary" means the average of the five highest  
58 fiscal year salaries earned as a member within the last fifteen  
59 fiscal years of total service credit, including military service  
60 as provided herein, or if total service is less than fifteen  
61 years, the average annual salary for the period on which  
62 contributions were made.

63 "Accumulated contributions" means all deposits and all de-  
64 ductions from the earnable compensation of a contributor  
65 minus the total of all supplemental fees deducted from his  
66 compensation.

67 "Regular interest" means interest at three percent com-  
68 pounded annually, or a higher earnable rate if approved by the  
69 retirement board.

70 "Refund interest" means interest compounded annually at  
71 a rate of three percent.

72 "Employer" means the agency of and within the state  
73 which has employed or employs a member.

74 "Contributor" means a member of the retirement system  
75 who has an account in the teachers accumulation fund.

76 "Beneficiary" means the recipient of annuity payments made  
77 under the retirement system.

78 "Refund beneficiary" means the estate of a deceased con-  
79 tributor, or such person as he shall have nominated as bene-  
80 ficiary of his contributions by written designation duly executed  
81 and filed with the retirement board.

82 "Earnable compensation" means the full compensation  
83 actually received by members for service as teachers whether  
84 or not a part of such compensation is received from other  
85 funds, federal or otherwise, than those provided by the  
86 state or its subdivisions. Allowances from employers for  
87 maintenance of members shall be deemed a part of earnable  
88 compensation for such members whose allowances were ap-  
89 proved by the teachers retirement board and contributions to  
90 the teachers retirement system were made, in accordance  
91 therewith, on or before the first day of July, one thousand nine  
92 hundred eighty.

93 "Annuities" means the annual retirement payments for life  
94 granted beneficiaries in accordance with this article.

95 "Member" means a member of the retirement system.

96 "Public schools" means all publicly supported schools,  
97 including normal schools, colleges and universities in this  
98 state.

99 "Deposit" means a voluntary payment to his account by a  
100 member.

101 The masculine gender shall be construed so as to include  
102 the feminine.

103 Age in excess of seventy years shall be deemed to be  
104 seventy years.

**§18-7A-14. Contributions by members.**

1 At the end of each month every member of the retirement  
2 system shall contribute six percent of his monthly earnable  
3 compensation to the retirement board: *Provided*, That any  
4 member employed by the West Virginia board of regents at  
5 an institution of higher education under its control shall con-  
6 tribute on his full earnable compensation, unless otherwise  
7 provided in section fourteen-a of this article.

8 Annually, the contributions of each member shall be credited  
9 to his account in the teachers accumulation fund. The con-  
10 tributions shall be deducted from the salaries of the mem-  
11 bers as herein prescribed, and every member shall be deemed  
12 to have given his consent to such deductions. No deductions,

13 however, shall be made from the earnable compensation of  
14 any member who retired because of age or service, and then  
15 resumed service unless as provided in section thirteen-a of  
16 this article.

17 The aggregate of employer contributions, due and payable  
18 under this article, shall equal annually the total deductions  
19 from the earnable compensation of members required by this  
20 section.

21 Payment by an employer to a member of the sum specified  
22 in the employment contract minus the amount of the em-  
23 ployee's deductions shall be deemed to be a full discharge of  
24 the employer's contractual obligation as to earnable com-  
25 pensation.

26 Each contributor shall file with the retirement board or with  
27 the employer to be forwarded to the retirement board an en-  
28 rollment form showing his date of birth and other data needed  
29 by the retirement board.

**§18-7A-16. Transfer of appropriations.**

1 The retirement board, on receipt of contributions from  
2 teachers deducted and remitted by employers as provided in  
3 section fifteen of this article, shall make requisition on the  
4 state auditor for an amount equaling such contributions. On  
5 receipt of the requisitions duly certified, the state auditor  
6 shall transfer the amount so requisitioned from the general  
7 state revenue fund to the employers accumulation fund.

8 At the beginning of each quarter the governor shall trans-  
9 fer to the employers accumulation fund one fourth of the  
10 annual appropriations therefor.

**§18-7A-17. Statement and computation of teachers' service.**

1 Under such rules and regulations as the retirement board  
2 may adopt, each teacher shall file a detailed statement of his  
3 length of service as a teacher for which he claims credit. The  
4 retirement board shall determine what part of a year is the  
5 equivalent of a year of service. In computing such service,  
6 however, it shall credit no period of more than a month's  
7 duration during which a member was absent without pay,



8 nor shall it credit for more than one year of service performed  
9 in any calendar year.

10 For the purpose of this article, the retirement board shall  
11 grant prior service credit to new entrants and other members of  
12 the retirement system for service in any of the armed forces  
13 of the United States in any period of national emergency  
14 within which a Federal Selective Service Act was in effect.  
15 For purposes of this section, "armed forces" shall include  
16 Women's Army Corps, Women's Appointed Volunteers for  
17 Emergency Service, Army Nurse Corps, Spars, Women's Re-  
18 serve and other similar units officially parts of the military  
19 service of the United States. Such military service shall be  
20 deemed equivalent to public school teaching, and the salary  
21 equivalent for each year of such service shall be the actual  
22 salary of the member as a teacher for his first year of teaching  
23 after discharge from military service. Prior service credit for  
24 military service shall not exceed ten years for any one mem-  
25 ber, nor shall it exceed twenty-five percent of total service  
26 at the time of retirement.

27 For service as a teacher in the employment of the federal  
28 government, or a state or territory of the United States, or a  
29 governmental subdivision of such state or territory, the re-  
30 tirement board shall grant credit to the member: *Provided*,  
31 That the member shall pay to the system double the amount  
32 he contributed during the first full year of current employment,  
33 times the number of years for which credit is granted, plus  
34 interest at a rate to be determined by the retirement board.  
35 Such interest shall be deposited in the reserve fund and service  
36 credit so granted at the time of retirement shall not exceed  
37 the lesser of ten years or fifty percent of the member's total  
38 service as a teacher in West Virginia. Any transfer of out-of-  
39 state service, as provided in this article, shall not be used  
40 to establish eligibility for a retirement allowance and the  
41 retirement board shall grant credit for such transferred service  
42 as additional service only: *Provided, however*, That a trans-  
43 fer of out-of-state service shall be prohibited if such service is  
44 used to obtain a retirement benefit from another retirement  
45 system: *Provided further*, That salaries paid to members for  
46 service prior to entrance into the retirement system shall not

47 be used to compute the average final salary of such member  
48 under the retirement system.

49 No member shall be deemed absent from service as a teacher  
50 while serving as a member of the Legislature of the state of  
51 West Virginia during any duly constituted session of that  
52 body: *Provided*, That the member makes contributions to  
53 the system equal to what would have been contributed during  
54 the period of absence had he performed his duties as a  
55 teacher.

56 No member shall be deemed absent from service as a teacher  
57 while serving on leave of absence as an officer with a state-  
58 wide professional teaching association, or who has served  
59 in such capacity, and no retired teacher, who served on such  
60 leave of absence while a member, shall be deemed to have  
61 been absent from service as a teacher by reason of such service  
62 on leave of absence: *Provided*, That the period of service  
63 credit granted for such service on leave of absence shall not  
64 exceed two years: *Provided, however*, That a member or  
65 retired teacher who is serving or has served as an officer of a  
66 statewide professional teaching association shall make deposits  
67 to the teachers retirement board, for the time of any such  
68 absence, in an amount double the amount which he would have  
69 contributed in his regular assignment for a like period of  
70 time.

71 The teachers retirement board shall grant service credit to  
72 any former or present member of the West Virginia public  
73 employees retirement system who has been a contributing  
74 member for more than three years, for service previously cred-  
75 ited by the public employees retirement system, and (1) shall  
76 require the transfer of the member's contributions to the  
77 teachers retirement system or (2) shall require a repayment of  
78 the amount withdrawn any time prior to the member's retire-  
79 ment: *Provided*, That there shall be added by the member to  
80 the amounts transferred or repaid under this paragraph an  
81 amount which shall be sufficient to equal the contributions he  
82 would have made had the member been under the teachers re-  
83 tirement system during the period of his membership in the  
84 public employees retirement system plus interest at a rate

85 of six percent compounded annually from the date of with-  
86 drawal to the date of payment. The interest paid shall be de-  
87 posited in the reserve fund.

88 If a member is not eligible for prior service credit or pension  
89 as provided in this article, then his prior service shall not be  
90 deemed a part of his total service.

91 A member who withdrew from membership shall be per-  
92 mitted to regain his former membership rights as specified in  
93 section thirteen of this article only in case he has served  
94 two years since his last withdrawal.

95 Subject to the above provisions, the board shall verify as  
96 soon as practicable the statements of service submitted. The  
97 retirement board shall issue prior service certificates to all  
98 persons eligible therefor under the provisions of this article.  
99 Such certificates shall state the length of such prior service  
100 credit, but in no case shall the prior service credit exceed  
101 forty years.

**§18-7A-18. Funds created; fund transfers.**

1 The funds created are the teachers accumulation fund, the  
2 employers accumulation fund, the benefit fund, the reserve  
3 fund and the expense fund. Each fund shall constitute a  
4 separate trust.

5 (a) The teachers accumulation fund shall be the fund in  
6 which the contributions of members shall be accumulated.  
7 The accumulated contributions of a member returned to him  
8 upon his withdrawal, or paid to his estate or designated  
9 beneficiary in the event of death, shall be paid from the  
10 teachers accumulation fund. Any accumulated contributions  
11 forfeited by failure to claim such contributions shall be trans-  
12 ferred from the teachers accumulation fund to the reserve  
13 fund.

14 (b) Beginning on the first day of July, one thousand nine  
15 hundred eighty-four, contributions of employers, equalling  
16 annually the members' contributions, shall be deposited in the  
17 employers accumulation fund through state appropriations,  
18 and such amounts shall be included in the budget bill sub-  
19 mitted annually by the Governor.

20 (c) The benefit fund shall be the fund from which annuities  
21 shall be paid. Upon the retirement of a member, his ac-  
22 cumulated contributions shall be transferred from the teachers  
23 accumulation fund to the benefit fund; the accumulated em-  
24 ployers' contribution shall be transferred from the employers  
25 accumulation fund to the benefit fund; and annually a sum  
26 for prior service pension and disability credits, if needed,  
27 shall be transferred from the reserve fund to the benefit  
28 fund. Any deficit occurring in the benefit fund which is not  
29 automatically met by payments to that fund, as provided for  
30 by this article, shall be met by additional transfers from the  
31 employers accumulation fund and, if necessary, by transfers  
32 from the teachers accumulation fund.

33 (d) The retirement board is hereby authorized to accept  
34 gifts and bequests. All gifts, bequests and interest earnings  
35 from investments received by the board shall be deposited in  
36 the reserve fund. Any funds that may come into possession  
37 of the retirement system in this manner or which may be  
38 transferred from the teachers accumulation fund by reason  
39 of the lack of a claimant or because of a surplus in any  
40 of the funds, or any other moneys the disposition of which  
41 is not otherwise provided for, shall be credited to the reserve  
42 fund. The retirement board shall allow interest on the con-  
43 tributions in the teachers accumulation fund. Such inter-  
44 est shall be paid from the reserve fund and credited to  
45 the teachers accumulation fund. Any deficit occurring in  
46 any fund which would not be automatically covered by the  
47 payments to that fund as otherwise provided by this article  
48 shall be met by transfers from the reserve fund to such  
49 fund. In the reserve fund shall be accumulated moneys from  
50 retirement board appropriations to pay the accrued liabilities  
51 of the system, caused by the granting of prior service, ad  
52 hoc increases granted prior to the first day of July, one  
53 thousand nine hundred eighty, and disability pensions. Costs  
54 associated with board investments, such as premiums, accrued  
55 interest and commisions, shall be paid from the reserve fund.

56 (e) The expense fund shall be the fund from which shall  
57 be paid the expense incurred in the administration of the  
58 retirement system. The retirement board is herewith authorized

59 to pay, from the expense fund, membership fees in such  
60 voluntary organizations as the national council on teacher  
61 retirement, anything in this code to the contrary notwith-  
62 standing. Interest on loans to members shall be deposited  
63 in the expense fund.

64 The retirement board is herewith given sole authority to  
65 direct and approve the making of any and all fund transfers  
66 as provided herein, anything in this code to the contrary not-  
67 withstanding.

**§18-7A-22. Persons eligible for prior service pensions.**

1 The following shall be eligible for prior service pensions:

2 (a) Present members upon retirement;

3 (b) Any person who has served at least twenty-five years  
4 as a teacher prior to July one, one thousand nine hundred  
5 forty-one; and

6 (c) A new entrant who becomes a present teacher.

**§18-7A-25. Eligibility for retirement allowance.**

1 Any member who has attained the age of sixty years or  
2 who has had thirty-five years of total service as a teacher  
3 in West Virginia, regardless of age, shall be eligible for  
4 an annuity. No new entrant nor present member shall be  
5 eligible for an annuity, however, if either has less than  
6 five years of service to his credit.

7 Any member who has attained the age of fifty-five years  
8 and who has served thirty years as a teacher in West Virginia  
9 shall be eligible for an annuity.

10 Any member who has served at least thirty but less than  
11 thirty-five years as a teacher in West Virginia and is less  
12 than fifty-five years of age shall be eligible for an annuity,  
13 but the same shall be the reduced actuarial equivalent of the  
14 annuity the member would have received if such member were  
15 age fifty-five at the time such annuity was applied for.

16 The request for any annuity shall be made by the member  
17 in writing to the retirement board, but in case of retirement for  
18 disability, the written request may be made by either the  
19 member or the employer.

20 A member shall be eligible for annuity for disability if he  
21 satisfies the conditions in both (a) and (b) as follows:

22 (a) His service as a teacher in West Virginia must total at  
23 least ten years, and service as a teacher must have been termi-  
24 nated because of disability, which disability must have caused  
25 absence from service for at least six months before his appli-  
26 cation for disability annuity is approved.

27 (b) An examination by a physician or physicians selected  
28 by the retirement board must show that the member is at  
29 the time mentally or physically incapacitated for service  
30 as a teacher, that for such service the disability is total and  
31 likely to be permanent, and that he should be retired in con-  
32 sequence thereof.

33 Continuance of the disability of the retired teacher shall be  
34 established by medical examination, as prescribed in the pre-  
35 ceding paragraph, annually for five years after retirement, and  
36 thereafter at such times as the retirement board may require.  
37 Payment of the disability annuity provided in this article  
38 shall cease immediately if the retirement board finds that the  
39 disability of the retired teacher no longer exists, or if the  
40 retired teacher refuses to submit to medical examination as  
41 required by this section.

**§18-7A-34. Loans to members.**

1 A member of the retirement system upon written applica-  
2 tion may borrow from his individual account in the teachers  
3 accumulation fund, subject to these restrictions:

4 (1) Loans shall be made in multiples of ten dollars, the  
5 minimal loan being one hundred dollars and the maximum  
6 being eight thousand dollars except if the total amount of  
7 loaned money outstanding exceeds twenty million dollars, the  
8 maximum will be three thousand dollars until the teachers re-  
9 tirement board determines that loans outstanding have been  
10 reduced to an extent that eight thousand dollar loans are again  
11 authorized.

12 (2) Loans to any one member shall not exceed one half of  
13 his contributions to his individual account in the teachers  
14 accumulation fund.

15 (3) Interest charged on the amount of the loan shall be  
16 six percent per annum, or a higher rate as set by the  
17 teachers retirement board. If repayable in installments, the  
18 interest shall not exceed the annual rate so established upon  
19 the principal amount of the loan, for the entire period of  
20 the loan, and such charge shall be added to the principal  
21 amount of the loan. The minimal interest charge shall be  
22 for six months.

23 (4) No member shall be eligible for more than one loan  
24 in any one year.

25 (5) If a refund or benefit is payable to the borrower or  
26 his beneficiary before he repays the loan with interest, the  
27 balance due with interest to date shall be deducted from  
28 such benefit or refund.

29 (6) From his monthly salary as a teacher the member  
30 shall pay the loan and interest by deductions which will pay  
31 the loan and interest in not more than sixty nor less than six  
32 months. Upon notice of loan granted and payment due, the  
33 employer shall be responsible for making such salary deductions  
34 and reporting them to the retirement board. At the option  
35 of the retirement board, loan deductions may be collected as  
36 prescribed herein for the collection of members' contribution,  
37 or may be collected through issuance of warrant by employer.  
38 If the borrower decides to make loan payments while not paid  
39 for service as a teacher, the retirement board must accept such  
40 payments.

**§18-7A-35. Coverage for nonteaching employees; prior service credit.**

1 (a) Nonteaching employees shall mean all persons, except  
2 teachers, regularly employed for full-time service by the  
3 following educational agencies: (a) Any county board of  
4 education, (b) the state board of education, (c) the West  
5 Virginia board of regents, and (d) the teachers retirement  
6 board.

7 (b) Such nonteaching employees shall be entitled to all  
8 the rights, privileges and benefits provided for teachers by  
9 this article, upon the same terms and conditions as are

10 herein prescribed for teachers. Any member who was em-  
11 ployed as a regular full-time employee in a nonteaching  
12 capacity by a board of education, school principal or school  
13 administrator, prior to the time he became eligible for mem-  
14 bership in the state teachers retirement system, shall be  
15 granted prior service credit for such service upon making  
16 application to the retirement board and providing satisfactory  
17 evidence of such service.

18 (c) Except as provided in section thirteen-b of this article,  
19 employees of the cooperative extension service and its pre-  
20 decessors in title, (agricultural extension division, West Vir-  
21 ginia extension agency, and West Virginia University co-  
22 operative extension service) shall be entitled to all the rights,  
23 privileges and benefits provided for teachers by this article,  
24 upon the same terms and conditions as are herein prescribed  
25 for teachers. Any member of the extension service or its  
26 predecessors in title, who was employed for thirty hours or  
27 more per week, prior to the time he became eligible for mem-  
28 bership in the state teachers retirement system, shall be granted  
29 service credit for such service upon making application to the  
30 retirement board and providing satisfactory evidence of such  
31 service. When the prior service is credited, each member of  
32 the retirement system so credited shall contribute an amount  
33 equal to the amount he would have contributed had he been a  
34 member of the retirement system during the period credited.

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## CHAPTER 153

(Com. Sub. for S. B. 257—By Mr. McGraw, Mr. President, et al.)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two-b, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-six-h, article seven-a, chapter eighteen of said code, all relating to the state public employees retirement act and the state teachers retirement system; providing increased supplemental benefits for



certain annuitants receiving less than a specified annual annuity, contingent on legislative budgetary action; and specifying factors for eligibility and computation thereof.

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

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

#### Chapter

5. **General Powers and Authority of The Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**

18. **Education.**

### **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.**

#### **ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

##### **§5-10-22b. Supplemental benefits for certain annuitants.**

1 Any annuitant who is receiving a retirement annuity  
2 of less than seven thousand five hundred dollars annually  
3 on the effective date of this section shall receive, upon  
4 application, a supplemental benefit, prospectively, under  
5 this section in any fiscal year for which the Legislature  
6 provides by line item appropriation for the payment of  
7 such benefit: *Provided*, That the effective date of retire-  
8 ment for such annuitant was prior to the first day of  
9 July, one thousand nine hundred seventy-eight, and he  
10 had ten years or more of credited service at the time of  
11 such retirement. For the purposes of this section, "ef-  
12 fective date of retirement" means the last day of actual  
13 employment, or the last day carried on the payroll of  
14 the employer, whichever is later, together with a meeting

15 fully of all eligibility requirements for retirement prior  
16 to the aforesaid effective date. Any annuitant retired  
17 pursuant to the disability provisions of this article shall  
18 be considered to have had ten years or more credited  
19 service at the time of such retirement.

20 Each such annuitant shall receive as his supplemental  
21 benefit an increased annual amount which is the product  
22 of the sum of fifteen dollars multiplied by his years of  
23 credited service: *Provided*, That the total annuity of any  
24 annuitant affected by the provisions of this section, to-  
25 gether with any of the other provisions of this article  
26 shall not exceed seven thousand five hundred dollars  
27 annually.

28 Any annuitant receiving the supplemental benefit  
29 provided for herein for the annuity payment period just  
30 prior to the first day of July, one thousand nine hundred  
31 eighty-four, or any annuitant made newly eligible for  
32 receipt of such supplemental benefit on such date, shall  
33 receive a nineteen percent increase in the amount of such  
34 supplemental benefit prior received or newly calculated,  
35 effective on and after the first day of July, one thousand  
36 nine hundred eighty-four; and irrespective of the maxi-  
37 mum total annuity proviso and limitation of seven thou-  
38 sand five hundred dollars annually.

39 For the purpose of calculating the supplemental benefit  
40 provided in this section, fractional parts of a service  
41 credit year are to be disregarded unless in excess of one  
42 half of a credited service year, in which event the same  
43 shall constitute a full year of service credit.

44 On and after the first day of July, one thousand nine  
45 hundred eighty-two, for the purpose of computation for  
46 determination of eligibility and for the amount of any  
47 supplemental benefit hereunder, separate computation  
48 shall be made of a retirant's own benefit and that which  
49 may be receivable as beneficiary of another, under the  
50 provisions of this article, with each such benefit being  
51 eligible for the supplemental benefit herein provided.

**CHAPTER 18. EDUCATION.****ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.****§18-7A-26h. Supplemental benefits for certain annuitants.**

1 Any annuitant who is receiving a retirement annuity of  
2 less than seven thousand five hundred dollars annually on  
3 the effective date of this section shall receive a supple-  
4 mental benefit, prospectively, under this section in any  
5 fiscal year for which the Legislature provides by line  
6 item appropriation for the payment of such benefit: *Pro-*  
7 *vided*, That the effective date of retirement for such  
8 annuitant was prior to the first day of July, one thousand  
9 nine hundred seventy-eight, and he had ten years or  
10 more of credited service at the time of such retirement.  
11 For the purposes of this section, "effective date of re-  
12 tirement" means the last day of actual employment, or  
13 the last day carried on the payroll of the employer, which-  
14 ever is later, together with a meeting fully of all eligibility  
15 requirements for retirement prior to the aforesaid effec-  
16 tive date. Any annuitant retired pursuant to the disability  
17 provisions of this article shall be considered to have had  
18 ten years or more credited service at the time of such re-  
19 tirement.

20 Each such annuitant shall receive as his supplemental  
21 benefit an increased annual amount which is the product  
22 of the sum of fifteen dollars multiplied by his years of  
23 credited service: *Provided*, That the total annuity of any  
24 annuitant affected by the provisions of this section, togeth-  
25 er with any of the other provisions of this article, shall  
26 not exceed seven thousand five hundred dollars annually.

27 Any annuitant receiving the supplemental benefit  
28 provided for herein for the annuity payment period just  
29 prior to the first day of July, one thousand nine hundred  
30 eighty-four, or any annuitant made newly eligible for  
31 receipt of such supplemental benefit on such date, shall  
32 receive a nineteen percent increase in the amount of such  
33 supplemental benefit prior received or newly calculated,  
34 effective on and after the first day of July, one thousand  
35 nine hundred eighty-four; and irrespective of the maxi-

36 mum total annuity proviso and limitation of seven thou-  
37 sand five hundred dollars annually. In any fiscal year in  
38 which pay increases are granted by the Legislature to  
39 active teachers, there shall also be given an increase in  
40 retirement benefits for retired teachers if funding is avail-  
41 able for this purpose.

42 For the purpose of calculating the supplemental bene-  
43 fit provided in this section, fractional parts of a service  
44 credit year are to be disregarded unless in excess of one  
45 half of a credited service year, in which event the same  
46 shall constitute a full year of service credit.

47 On or after the first day of July, one thousand nine  
48 hundred eighty-two, for the purpose of computation for  
49 determination of eligibility and for the amount of any  
50 supplemental benefit hereunder, separate computation  
51 shall be made of a retirant's own benefit and that which  
52 may be receivable as beneficiary of another under the  
53 provisions of this article, with each such benefit being  
54 eligible for the supplemental benefit herein provided.

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## CHAPTER 154

(Com. Sub. for H. B. 1622—By Delegate Goff and Delegate Hutchinson)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia public employees insurance act; authority to establish group insurance plans, including group life and accidental death insurance plans; providing for increasing the maximum under the optional group life and accidental death insurance plan, payable in full by the employee; and making the employee's spouse and dependents includable therein.

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

That section seven, article sixteen, chapter five of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

**§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan and group life and accidental death insurance plan; rules and regulations for administration of plans; what plans may provide; optional plans; separate rating for claims experience purposes.**

1 The board is hereby empowered and authorized to estab-  
2 lish a group hospital and surgical insurance plan or plans, a  
3 group major medical insurance plan or plans, and a group  
4 life and accidental death insurance plan or plans for those  
5 employees herein made eligible, and to establish and promul-  
6 gate rules and regulations for the administration of such  
7 plans, subject to the limitations contained in this article. Such  
8 plans may provide for group hospital and surgical and group  
9 major medical insurance against the financial cost of hos-  
10 pitalization, surgical and medical treatment and care, and  
11 may also include, among other things, prescribed drugs, medi-  
12 cines, prosthetic appliances, hospital inpatient and outpatient  
13 service benefits, and medical expenses and indemnifying bene-  
14 fits, and group life and accidental death insurance, and such  
15 other coverage and benefits deemed appropriate and desirable  
16 by the board.

17 The board shall make available to each employee herein  
18 made eligible, at full cost to the employee, the opportunity  
19 to purchase optional group life and accidental death insurance  
20 in an amount not to exceed fifty thousand dollars for life  
21 insurance and fifty thousand dollars for accidental death in-  
22 surance as established under the rules and regulations of  
23 the board. In addition, each employee shall be entitled to  
24 have his spouse and dependents, as defined by the rules and  
25 regulations of the board, included in such optional coverage,  
26 at full cost to the employee, in an amount not to exceed five  
27 thousand dollars for life insurance and five thousand dollars  
28 for accidental death insurance for the spouse and not to exceed

29 two thousand dollars in life insurance and two thousand dollars  
30 in accidental death insurance for each eligible dependent; and  
31 with full authorization hereby to the board to make the same  
32 available and provide such opportunity of purchase to each  
33 employee.

34 The board may cause to be separately rated for claims ex-  
35 perience purposes (1) all employees of the state of West  
36 Virginia, (2) all teaching and professional employees of the  
37 West Virginia board of regents and county boards of education,  
38 (3) all nonteaching employees of the West Virginia board of  
39 regents and county boards of education, or (4) any other  
40 categorization which would ensure the stability of the overall  
41 program.

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## CHAPTER 155

(Com. Sub. for H. B. 1429—By Delegate Murensky and Delegate Riffle)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

**AN ACT** to amend and reenact sections twelve and eighteen, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia public employees' insurance system; providing for crediting accrued annual leave and sick leave toward extended insurance coverage for retired employees, their spouses and dependents; requiring the public employees' insurance board to promulgate rules and regulations; providing for extended insurance coverage for retired employees, their spouses and dependents based upon credit for the employees' accrued annual leave and sick leave.

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

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

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

- §5-16-12. Payment of costs by employer and employee; coverage for employee's spouse and dependents generally; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave.
- §5-16-18. Rules and regulations for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage.
- §5-16-12. Payment of costs by employer and employee; coverage for employee's spouse and dependents generally; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave.**

1 The board is hereby authorized to provide under any con-  
2 tract or contracts entered into under the provisions of this  
3 article that the costs of any such group hospital and surgical  
4 insurance, group major medical insurance, group life and acci-  
5 dental death insurance benefit plan or plans may be paid by  
6 the employer and employee. In addition, each employee shall  
7 be entitled to have his spouse and dependents, as defined by  
8 the rules and regulations of the board, included in any group  
9 hospital and surgical insurance or group major medical in-  
10 surance coverage provided. The board shall adopt rules and  
11 regulations according to chapter twenty-nine-a of this code  
12 governing the discontinuance and resumption of any employee's  
13 coverage for his spouse and dependents.

14 Should a participating employee be terminated from em-  
15 ployment involuntarily or in reduction of work force, the em-  
16 ployee's insurance coverage provided under this article shall  
17 continue for a period of three months at no additional cost to  
18 the employee: *Provided*, That an employee discharged for  
19 misconduct shall not be eligible for extended benefits under  
20 this section: *Provided, however*, That coverage may be ex-  
21 tended up to the maximum period of three months, while  
22 administrative remedies contesting the charge of misconduct  
23 are pursued: *Provided further*, That should the discharge for

24 misconduct be upheld, the full cost of the extended coverage  
25 shall be reimbursed by the employee. If the employee is again  
26 employed or recalled to active employment within twelve  
27 months of his prior termination, he shall not be considered a  
28 new enrollee and shall not be required to again contribute his  
29 share of the premium cost, if he had already fully contributed  
30 such share during the prior period of employment.

31 When a participating employee is compelled or required by  
32 law to retire before reaching the age of sixty-five, or when a  
33 participating employee voluntarily retires as provided by law,  
34 that employee's accrued annual leave and sick leave, if any,  
35 shall be credited toward an extension of the insurance cover-  
36 age provided by this article, according to the following for-  
37 mulae: Such insurance coverage for a retired employee shall  
38 continue one additional month for every two days of annual  
39 leave or sick leave, or both, which the employee had accrued  
40 as of the effective date of his retirement. For a retired em-  
41 ployee, his spouse and dependents, such insurance coverage  
42 shall continue one additional month for every three days of  
43 annual leave or sick leave, or both, which the employee had  
44 accrued as of the effective date of his retirement.

**§5-16-18. Rules and regulations for administration of article; eligi-  
bility of certain retired employees and dependents of  
deceased members for coverage; employees on medi-  
cal leave of absence entitled to coverage.**

1 The board shall promulgate such rules and regulations as  
2 may be required for the effective administration of the pro-  
3 visions of this article. All rules and regulations of the board  
4 and all hearings held by the board shall be promulgated and  
5 held in accordance with the provisions of chapter twenty-nine-a  
6 of the code.

7 Such regulations shall provide that any employee of the  
8 state who has been compelled or required by law to retire  
9 before reaching the age of sixty-five years shall be eligible to  
10 participate in the public employees' health insurance program  
11 at his own expense for the cost of coverage after any extended  
12 coverage to which he, his spouse and dependents may be en-  
13 titled by virtue of his accrued annual leave or sick leave, pur-



14 suant to the provisions of section twelve of this article, has  
15 expired. The dependents of any deceased member shall be en-  
16 titled to continue their participation and coverage upon pay-  
17 ment of the total cost for such coverage. Any employee who  
18 voluntarily retires, as provided by law, shall be eligible to  
19 participate in the public employees' health insurance program  
20 at his own expense for the cost of coverage after any extended  
21 coverage to which he, his spouse and dependents may be en-  
22 titled by virtue of his accrued annual leave or sick leave, pur-  
23 suant to the provisions of section twelve of this article, has  
24 expired.

25 Any employee who is on a medical leave of absence, ap-  
26 proved by his employer, shall, subject to the following pro-  
27 visions of this paragraph, be entitled to continue his coverage  
28 until he returns to his employment, and such employee and  
29 employer shall continue to pay their proportionate share of  
30 premium costs as provided by this article: *Provided*, That  
31 the employer shall be obligated to pay its proportionate share  
32 of the premium cost only for a period of one year: *Provided*,  
33 *however*, That during the period of such leave of absence, the  
34 employee shall, at least once each month, submit to the  
35 employer the statement of a qualified physician certifying that  
36 the employee is unable to return to work.

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## CHAPTER 156

(Com. Sub. for H. B. 1599—By Delegate Neal and Delegate Burke)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; relating to increasing the salaries of the members of the department of public safety; and providing for increasing the maximum supplemental payment receivable for excess hours (overtime) worked.

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

That section five, article two, chapter fifteen of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.**

**§15-2-5. Salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.**

1 Members of the department shall receive annual salaries  
2 pursuant to appropriation by the Legislature, payable at least  
3 monthly, as follows:

4 Any lieutenant colonel shall receive thirty thousand dollars;  
5 any major shall receive twenty-seven thousand five hundred  
6 dollars; any captain shall receive twenty-five thousand five  
7 hundred dollars; any lieutenant shall receive twenty-four  
8 thousand dollars; any master sergeant or first sergeant shall  
9 receive twenty-two thousand five hundred dollars; any ser-  
10 geant shall receive twenty-one thousand dollars; any corporal  
11 shall receive nineteen thousand five hundred dollars; any  
12 trooper first class shall receive eighteen thousand dollars;  
13 and any newly enlisted trooper shall receive a salary of  
14 one thousand two hundred ninety dollars monthly during  
15 the period of his basic training, and upon the satisfactory  
16 completion of such training and assignment to active duty,  
17 each such trooper shall receive, during the remainder of his first  
18 year's service, a salary of one thousand three hundred ninety-  
19 four dollars monthly. During the second year of his service  
20 in the department, each trooper shall receive an annual salary  
21 of seventeen thousand one hundred dollars; during the third  
22 year of his service each such trooper shall receive an annual  
23 salary of seventeen thousand three hundred eighty-eight dol-  
24 lars; and during the fourth year and fifth year of such trooper's  
25 service, and for each year thereafter, he shall receive an annual  
26 salary of seventeen thousand six hundred sixteen dollars.  
27 Each member of the department whose salary is fixed and  
28 specified herein shall receive and be entitled to an increase in  
29 salary over that hereinbefore set forth, for grade in rank,  
30 based on length of service, including that heretofore and  
31 hereafter served with the department, as follows: At the end  
32 of five years of service, such member shall receive a salary

33 increase of three hundred dollars to be effective during his next  
34 three years of service and a like increase at three-year inter-  
35 vals thereafter, with such increases to be cumulative.

36 In applying the foregoing salary schedule where salary in-  
37 creases are provided for length of service, members of the  
38 department in service at the time this article becomes effective  
39 shall be given credit for prior service and shall be paid such  
40 salaries as the same length of service will entitle them to receive  
41 under the provisions hereof.

42 The Legislature finds and declares that there is litigation  
43 pending in the circuit court of Kanawha County on the question  
44 of whether members of the department of public safety are  
45 covered by the state wage and hour law, article five-c, chapter  
46 twenty-one of this code. The Legislature further finds and  
47 declares that because of the unique duties of members of  
48 the department, it is not appropriate to apply such wage  
49 and hour provisions to them. Accordingly, members of the  
50 department of public safety are hereby excluded from the  
51 provisions of the wage and hour law. The express exclusion  
52 hereby enacted shall not be construed as any indication  
53 that such members were or were not heretofore covered by  
54 such wage and hour law.

55 In lieu of any overtime pay they might otherwise have  
56 received under the wage and hour law, and in addition to  
57 their salaries and increases for length of service, members  
58 who have completed basic training may receive supplemental  
59 pay as hereinafter provided.

60 The superintendent shall, within thirty days after the  
61 effective date hereof, promulgate a rule or regulation to  
62 establish the number of hours per month which shall consti-  
63 tute the standard work month for the members of the depart-  
64 ment. Such rule or regulation shall further establish, on a  
65 graduated hourly basis, the criteria for receipt of a portion or  
66 all of such supplemental payment when hours are worked in  
67 excess of said standard work month. Such rule or regulation  
68 shall be promulgated pursuant to the provisions of chapter  
69 twenty-nine-a of the code. The superintendent shall certify  
70 monthly to the department's payroll officer the names of those  
71 members who have worked in excess of the standard work

72 month and the amount of their entitlement to supplemental  
73 payment.

74 The supplemental payment shall be in an amount equal to  
75 one and one-half percent of the annual salary of a trooper  
76 during his second year of service, not to exceed two hundred  
77 fifteen dollars monthly. The superintendent and civilian em-  
78 ployees of the department shall not be eligible for any such  
79 supplemental payments.

80 Each member of the department, except the superintendent  
81 and civilian employees, shall execute, before entering upon  
82 the discharge of his duties, a bond with security in the sum  
83 of five thousand dollars payable to the state of West Vir-  
84 ginia, conditioned upon the faithful performance of his duties,  
85 and such bond shall be approved as to form by the attorney  
86 general and to sufficiency by the governor.

87 Any member of the department who is called to perform  
88 active duty for training or inactive duty training in the na-  
89 tional guard or any reserve component of the armed forces  
90 of the United States annually shall be granted upon request  
91 leave time not to exceed thirty calendar days for the purpose  
92 of performing such active duty for training or inactive duty  
93 training, and the time so granted shall not be deducted from  
94 any leave accumulated as a member of the department.

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## CHAPTER 157

(Com. Sub. for H. B. 1985—By Delegate Blatnik)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section six, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the appeal board composition; including one trooper and one member of each of the six ranks above trooper on the board; removing the provision that a member of the board may not be of the same rank as the person bringing the appeal; and placing the burden

upon the superintendent to prove a transfer is for the purpose of the operational needs of the department.

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

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

**ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.**

**§15-2-6. Departmental appeals board; appeal procedures.**

1 Appeals of transfers, suspensions, demotions in rank and  
2 discharges shall be heard by boards of appeals convened  
3 pursuant to the provisions of this section. The boards shall  
4 each consist of seven members and five members shall con-  
5 stitute a quorum. A new board shall be convened to hear  
6 and determine each new appeal filed by a member of the  
7 department. There may be more than one board in existence  
8 at the same time meeting on different appeals. A member of  
9 the retirement board is eligible to serve on an appeals board.

10 The members of a board shall be one member of the de-  
11 partment who is of the rank of trooper and six members of  
12 the department who are of one of each of the six consecutive  
13 ranks above trooper, all of whom shall be chosen by lot by  
14 the superintendent with each member to be so chosen from  
15 among all the members of each of the seven ranks. No  
16 department member may serve on an appeals board if he is  
17 a member of the same detachment as the member making  
18 the appeal. Within ten days after he has been notified of  
19 his selection and assignment to serve on a board, a member  
20 may for cause request to be relieved of such assignment. The  
21 superintendent shall determine whether the reasons alleged  
22 by the member are sufficient cause to relieve the member of  
23 such assignment. If such request is granted by the superin-  
24 tendent, a new board member shall be selected by lot from  
25 the same rank to replace the member who has been relieved  
26 of such assignment.

27 A chairman shall be selected by the members of the board.  
28 Each member of a board shall be reimbursed for all reason-  
29 able and necessary expenses actually incurred in attending

30 meetings of a board. All expenses of a board shall be paid  
31 from appropriations to the department.

32 Within fifteen days after a member of the department has  
33 received a notice of transfer or a statement of charges and  
34 an order of suspension, demotion in rank or discharge by  
35 the superintendent, he may appeal the transfer or order to an  
36 appeals board by filing a written notice of appeal with the  
37 superintendent. The superintendent shall promptly record  
38 and file each appeal, select a board, notify each new board  
39 member of his selection, and furnish to each board member a  
40 copy of the notice or order appealed from and the notice of  
41 appeal. A hearing by a board of appeals shall be held  
42 within thirty days after the superintendent has received a  
43 member's notice of appeal. At least fifteen days prior to  
44 the hearing date, the board shall notify the superintendent  
45 and the member making the appeal of the date, time and place  
46 of the hearing.

47 Any member of the department who makes such an appeal,  
48 as aforesaid, may be represented by an attorney or by any  
49 member of the department or retired member who is re-  
50 ceiving benefits from the death, disability and retirement fund.  
51 The superintendent may be represented by counsel of his  
52 choice. In the appeal of a transfer, the superintendent has  
53 the burden of proof that the transfer is for the purpose of the  
54 operational needs of the department. In any other appeal  
55 the superintendent has the burden of proof as to the charges  
56 alleged. The procedure in any hearing before the board  
57 shall be informal and without adherence to the technical  
58 rules of evidence required in proceedings in courts of record.  
59 All evidence submitted to the board shall be submitted under  
60 oath. The chairman, or any member of the board, shall have  
61 authority to administer oaths to witnesses, subpoena witnesses  
62 and compel the production of books and papers pertinent to  
63 any appeal or hearing authorized by this section.

64 If any person subpoenaed to appear at any appeal or hear-  
65 ing shall refuse to appear, or shall refuse to answer inquiries  
66 propounded at the appeal or hearing or shall fail or refuse  
67 to produce books and papers which have been subpoenaed  
68 which are pertinent to any appeal or hearing authorized by

69 this section, the board shall report the facts to the circuit  
70 court of Kanawha County or the circuit court of any county  
71 in which the hearing is being conducted and such court may  
72 compel obedience to the subpoena as through such subpoena  
73 had been issued by such court in the first instance. A person  
74 giving testimony at an appeal or hearing authorized by this  
75 section shall not be liable for such testimony given in good  
76 faith and without malicious intent.

77 The board shall designate a reporter for any such hearing  
78 who shall record and transcribe all of the proceedings. Upon  
79 his demand, the member making the appeal shall have a  
80 public hearing on the charges and in the absence of such  
81 demand, the board may determine whether or not the hearing  
82 should be public. Any hearing may be continued, recessed or  
83 adjourned by the board.

84 The superintendent shall provide reasonable space for the  
85 conduct of hearings. The charges of the reporter shall be  
86 paid by the superintendent from available appropriations.  
87 At the conclusion of the hearing, the board shall determine  
88 whether or not the superintendent's order shall be sustained.  
89 The board's decision shall be issued in writing, with copies  
90 thereof being sent by the board to the superintendent and to  
91 the appealing member by certified mail, return receipt re-  
92 quested. A hearing shall be conducted by at least five  
93 members of the board and the decision of the board shall be  
94 made by a majority vote of all the members of the board.

95 Either party aggrieved by a decision of a board of appeals  
96 may appeal the decision to the circuit court of Kanawha  
97 County within sixty days of receipt of a copy of the board's  
98 decision.

99 The court shall hear the appeal upon the record and de-  
100 termine all questions submitted to it on appeal.

101 In the event any decision sustaining the superintendent's  
102 order or notice is reversed upon judicial review, which reversal  
103 is final, the superintendent shall return the member to his  
104 status prior to the superintendent's order or notice without  
105 any acts or action of reprisal or reprimand, with full payment  
106 of any compensation withheld and with full credit for service

107 between the date the superintendent issued his order or  
108 notice and the date of the final judicial decision reversing the  
109 decision of the board.

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## CHAPTER 158

(Com. Sub. for S. B. 312—By Senator Boettner)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-one, relating to the authorization of charitable raffles; specifying the legislative intent; definitions; specifying when raffle may be conducted without a license; establishing procedure for licensure through the state tax commissioner; providing for annual and limited occasion licenses; setting forth restrictions and limitations with respect to such licenses; establishing license fees; exempting raffle occasions from other fees and taxes; specifying the information required to be submitted for the license application; permitting the amendment of any such license under certain circumstances; authorizing any licensee to adopt rules and regulations governing the conduct of raffle occasions; establishing limitations on the value of raffle prizes which may be awarded; prohibiting certain prizes; prohibiting compensation to individuals who assist in conducting raffle occasions; authorizing concessions in connection with raffle occasions; providing certain conditions and limitations with respect to such concessions; relating to the payment of rent or other fees for the use of premises in conducting raffle occasions; providing conditions and limitations with respect to the use of such premises; providing for the payment of expenses from the gross proceeds of raffle occasions; providing for the disbursement of net proceeds from raffle occasions; requiring that certain records be maintained by licensees; authorizing the state tax commissioner to perform an audit of such records; permitting the advertisement of raffle



occasions; setting forth criminal offenses; providing for criminal penalties; authorizing the state tax commissioner to promulgate rules and regulations to administer the provisions of this article; when a license may be denied, revoked or suspended; relating to notice of revocation or suspension; establishing a procedure for a hearing; providing for judicial review of the commissioner's order; specifying when the commissioner may issue an emergency order suspending a license; requiring every licensee to file financial reports; requiring the filing of a license in the office of the clerk of the county commission of the county in which the raffle occasions are to be held; providing that the license application shall be made available for public inspection; authorizing a county option election to determine whether charitable raffles should continue to be held in such county; setting forth the requirements and procedures for any such county option election; prohibiting certain persons from participating in any raffle activities; providing restrictions on the use of raffle equipment; establishing that net proceeds of any state fair raffle occasion are considered used for charitable or public service purposes; setting forth the procedure for the issuance of a state fair raffle license; and providing a severability clause.

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

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

**ARTICLE 21. CHARITABLE RAFFLES.**

- §47-21-1. Legislative intent.
- §47-21-2. Definitions.
- §47-21-3. Authorizing the conduct of certain raffles without a license.
- §47-21-4. Who may hold raffles; application for license; licenses not transferable.
- §47-21-5. Annual license; conditions on holding of raffles.
- §47-21-6. Limited occasion license; conditions on holding of raffles.
- §47-21-7. License fee and exemption from taxes.
- §47-21-8. Information required in application.
- §47-21-9. Amendment of license.
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- §47-21-23. Filing of copy of license; application open to public inspection.
- §47-21-24. County option election.
- §47-21-25. Prohibited acts by convicted persons.
- §47-21-26. Restrictions on use of raffle equipment.
- §47-21-27. Proceeds of state fair.
- §47-21-28. State fair raffle license; rules and regulations.
- §47-21-29. Severability.

**§47-21-1. Legislative intent.**

- 1 The Legislature, in recognition of the need charitable and
- 2 public service organizations have for a practicable way of
- 3 raising funds, declares its intent to grant the privilege of
- 4 holding raffles to those organizations which qualify as
- 5 provided in this article.

**§47-21-2. Definitions.**

- 1 For purposes of this article, unless specified otherwise:
- 2 (a) "Charitable or public service activity or endeavor"
- 3 means any bona fide activity or endeavor which directly
- 4 benefits one or more people by:
  - 5 (1) Contributing to educational or religious purposes; or
  - 6 (2) Relieving them from disease, distress, suffering,
  - 7 constraint or the effects of poverty; or
  - 8 (3) Increasing their comprehension of and devotion to
  - 9 the principles upon which this nation was founded and to
  - 10 the principles of good citizenship; or
  - 11 (4) Making them aware of or educating them about
  - 12 issues of public concern so long as the activity or endeavor is

13 not aimed at supporting or participating in the campaign of  
14 any candidate for public office; or

15 (5) By lessening the burdens borne by government or  
16 voluntarily supporting, augmenting or supplementing  
17 services which government would normally render to the  
18 people; or

19 (6) Providing or supporting nonprofit community  
20 activities for youth, senior citizens or the disabled; or

21 (7) Providing or supporting nonprofit cultural, musical  
22 or artistic activities.

23 (b) "Charitable or public service organization" means a  
24 bona fide, not for profit, tax-exempt, benevolent,  
25 educational, philanthropic, humane, patriotic, civic,  
26 religious, fraternal or eleemosynary incorporated or  
27 unincorporated association or organization; or a volunteer  
28 fire department, rescue unit or other similar volunteer  
29 community service organization or association; but does  
30 not include any nonprofit association or organization,  
31 whether incorporated or not, which is organized primarily  
32 for the purposes of influencing legislation or supporting or  
33 promoting the campaign of any candidate for public office.

34 (c) "Commissioner" means the state tax commissioner.

35 (d) "Concession" means any stand, booth, cart, counter  
36 or other facility, whether stationary or movable, where  
37 beverages, both alcoholic and nonalcoholic, food, snacks,  
38 cigarettes or other tobacco products, newspapers, souvenirs  
39 or any other items are sold to patrons by an individual  
40 operating the facility. Notwithstanding anything contained  
41 in subdivision (2), subsection (a), section twelve, article  
42 seven, chapter sixty of this code to the contrary,  
43 "concession" includes beverages which are regulated by  
44 and shall be subject to the provisions of chapter sixty of this  
45 code.

46 (e) "Conduct" means to direct the actual holding of a  
47 raffle by activities including, but not limited to, handing  
48 out tickets, collecting money, drawing the winning  
49 numbers or names, announcing the winning numbers or  
50 names, posting the winning numbers or names, verifying  
51 winners and awarding prizes.

52 (f) "Expend net proceeds for charitable or public  
53 service purposes" means to devote the net proceeds of a  
54 raffle occasion or occasions to a qualified recipient  
55 organization or as otherwise provided by this article and  
56 approved by the commissioner pursuant to section fifteen of  
57 this article.

58 (g) "Gross proceeds" means all moneys collected or  
59 received from the conduct of a raffle or raffles at all raffle  
60 occasions held by a licensee during a license period; this  
61 term shall not be deemed to include any moneys collected or  
62 received from the sale of concessions at raffle occasions.

63 (h) "Joint raffle occasion" means a single gathering or  
64 session at which a series of one or more successive raffles is  
65 conducted by two or more licensees.

66 (i) "Licensee" means any organization or association  
67 granted an annual or limited occasion license pursuant to  
68 the provisions of this article.

69 (j) "Net proceeds" means all moneys collected or  
70 received from the conduct of a raffle or raffles at occasions  
71 held by a licensee during a license period after payment of  
72 the raffle expenses authorized by sections eleven, thirteen  
73 and fifteen of this article; this term shall not be deemed to  
74 include moneys collected or received from the sale of  
75 concessions at raffle occasions.

76 (k) "Person" means any individual, association, society,  
77 incorporated or unincorporated organization, firm,  
78 partnership or other nongovernmental entity or institution.

79 (l) "Patron" means any individual who attends a raffle  
80 occasion other than an individual who is participating in  
81 the conduct of the occasion or in the operation of any  
82 concession, whether or not the individual is charged an  
83 entrance fee or participates in any raffle.

84 (m) "Qualified recipient organization" means any bona  
85 fide, not for profit, tax-exempt, as defined in subdivision (p)  
86 of this section, incorporated or unincorporated association  
87 or organization which is organized and functions  
88 exclusively to directly benefit a number of people as  
89 provided in subparagraphs (1) through (7), subdivision (a)

90 of this section. "Qualified recipient organization" includes  
91 without limitation any licensee which is organized and  
92 functions exclusively as provided in this subdivision.

93 (n) "Raffle" means a game involving the selling of  
94 tickets to participate in such game, certain among which, as  
95 determined by drawing after the sale, entitle the holder or  
96 holders to a prize or prizes.

97 (o) "Raffle occasion" or "occasion" means a single  
98 gathering or session at which a series of one or more  
99 successive raffles is conducted by a single licensee.

100 (p) "Tax-exempt association or organization" means  
101 an association or organization which is, and has received  
102 from the "Internal Revenue Service" a determination letter  
103 that is currently in effect stating that the organization is,  
104 exempt from federal income taxation under subsection  
105 501(a) and described in subsection 501(c) (3), 501(c) (4), 501  
106 (c) (8), 501(c) (10), 501(c) (19) or 501(d) of the "Internal  
107 Revenue Code."

**§47-21-3. Authorizing the conduct of certain raffles without  
a license.**

1 Notwithstanding any other provisions of this article to  
2 the contrary, any charitable or public service organization  
3 which has been in existence in this state for at least one year  
4 is hereby authorized to conduct raffles without compliance  
5 with the licensing provisions of this article: *Provided*, That  
6 any prize awarded in any single raffle at a raffle occasion  
7 may not exceed in value the sum of one thousand dollars:  
8 *Provided, however*, That the cumulative gross proceeds  
9 derived from the conduct of raffle occasions by any such  
10 charitable or public service organization shall not exceed  
11 seven thousand five hundred dollars during any calendar  
12 year: *Provided further*, That any such organization shall  
13 not be subject to the record keeping provisions of section  
14 sixteen of this article but shall maintain a separate  
15 accounting for the operation of raffles. All records required  
16 by this section shall be maintained for at least three  
17 calendar years and shall be available for reasonable  
18 inspection by the commissioner.

**§47-21-4. Who may hold raffles; application for license; licenses not transferable.**

1 Except as provided in section three of this article, any  
2 charitable or public service organization which has been in  
3 existence in this state for at least one year prior to filing an  
4 application for a raffle license issued pursuant to section  
5 five or section six of this article may hold raffle occasions in  
6 accordance with the provisions of this article during such  
7 time as it holds a valid license.

8 Application for a raffle license shall be made to the tax  
9 commissioner and shall be on a form which shall be  
10 supplied by him. The application shall contain the  
11 information required by section eight of this article and any  
12 other information which the commissioner considers  
13 necessary. An application shall be filed not less than sixty  
14 days before the date when the applicant intends to hold its  
15 first raffle occasion. An application which is not denied  
16 within thirty days after filing is considered approved and  
17 the commissioner shall, within five days after the  
18 expiration of such thirty days, send to the applicant its  
19 license.

20 For purposes of this article, any application for an annual  
21 license or a limited occasion license received prior to the  
22 effective date of this article is considered filed on such  
23 effective date.

24 No raffle license issued pursuant to this article may be  
25 transferred.

**§47-21-5. Annual license; conditions on holding of raffles.**

1 A charitable or public service organization, or any of its  
2 auxiliaries or other organizations otherwise affiliated with  
3 it, may apply for an annual license. Only one license per  
4 year in the aggregate may be granted to a charitable or  
5 public service organization and all of its auxiliaries or other  
6 associations or organizations otherwise affiliated with it:  
7 *Provided*, That for purposes of this section, the various  
8 branches, chapters or lodges of any national association or  
9 organization or local churches of a nationally organized  
10 church are not considered affiliates or auxiliaries of each  
11 other. The commissioner shall by regulation provide for the

12 manner for determining to which organization, whether the  
13 parent organization, an affiliate or an auxiliary, the one  
14 license allowed under this section is granted. An annual  
15 license is valid for one year from the date of issuance. No  
16 organizations may hold a joint raffle occasion under any  
17 annual licenses.

18 A licensee shall display its annual raffle license  
19 conspicuously at the location where the raffle occasion is  
20 held.

**§47-21-6. Limited occasion license; conditions on holding of raffles.**

1 Two or more organizations may hold a joint raffle  
2 occasion provided each participating organization has been  
3 granted a limited occasion raffle license for such jointly  
4 held occasion: *Provided*, That no licensee which holds an  
5 annual license may obtain more than one limited occasion  
6 license.

7 A limited occasion license is valid only for the time period  
8 specified in the application and entitles only the licensee to  
9 hold two raffle occasions during the time period so specified  
10 which may not exceed six months from the date of issuance  
11 of such limited occasion license.

12 Subject to the limitations set forth in this section for  
13 charitable or public service organizations having an annual  
14 license, a charitable or public service organization and all  
15 of its auxiliaries or other associations or organizations  
16 otherwise affiliated with it, may be granted only three  
17 limited occasion licenses per year in the aggregate. For  
18 purposes of this section, the various branches, chapters or  
19 lodges of any national association or organization or local  
20 churches of a nationally organized church are not  
21 considered affiliates or auxiliaries of each other. The  
22 commissioner shall by regulation provide the manner for  
23 determining to which organization, whether the parent  
24 organization, an affiliate or an auxiliary, the three licenses  
25 allowed under this section are granted.

26 A licensee shall display its limited occasion license  
27 conspicuously at the location where the raffle occasion is  
28 held.

**§47-21-7. License fee and exemption from taxes.**

1 (a) A license fee shall be paid to the tax commissioner  
2 for annual licenses in the amount of fifty dollars. A license  
3 fee shall be paid to the tax commissioner for a limited  
4 occasion license in the amount of twenty-five dollars. The  
5 license fee imposed by this section is in lieu of all other  
6 license or franchise taxes or fees of this state, and no county,  
7 municipality or political subdivision of this state is  
8 empowered to impose a license or franchise tax or fee on any  
9 raffle or raffle occasion.

10 (b) The gross proceeds derived from the conduct of  
11 raffle occasions are exempt from state and local business  
12 and occupation taxes, income taxes, excise taxes and all  
13 special taxes. Any charitable or public service organization  
14 conducting a raffle occasion pursuant to the provisions of  
15 this article is exempt from payment of consumers sales and  
16 service taxes, use taxes and all other taxes on all purchases  
17 for use or consumption in the conduct of a raffle occasion  
18 and is exempt from collecting consumers sales taxes on any  
19 admission fees and sales of raffle tickets.

**§47-21-8. Information required in application.**

1 An application for a raffle license shall include the  
2 following information:

3 (a) Name of the applicant and name and headquarter's  
4 address of any state or national organization of which the  
5 applicant is a local branch or lodge;

6 (b) The address and telephone number of the applicant  
7 organization, if any, and if the applicant organization has  
8 no telephone, then the address and telephone number of the  
9 person applying on behalf of such organization shall be  
10 supplied;

11 (c) For a limited occasion license, the names and  
12 addresses of two or more bona fide active members of the  
13 applicant organization who are charged with overall  
14 responsibility for the applicant's raffle operations, at least  
15 one of whom shall be present when the winning numbers or  
16 names are drawn, announced, posted and verified and the  
17 prizes are awarded; and the names and addresses of the



18 highest elected officer of the licensee and his officially  
19 appointed designee, one of whom shall be present when the  
20 winning numbers or names are drawn, announced, posted  
21 and verified and the prizes are awarded; for an annual  
22 license, the names, addresses and telephone numbers of  
23 three or more bona fide active members of the applicant  
24 organization who are charged with overall responsibility  
25 for the applicant's raffle operations, at least one of whom  
26 shall be present when the winning numbers or names are  
27 drawn, announced, posted and verified and the prizes are  
28 awarded; and the names and addresses and telephone  
29 numbers of the highest elected officer of the licensee and his  
30 officially appointed designee, one of whom shall be present  
31 when the winning numbers or names are drawn,  
32 announced, posted and verified and the prizes are awarded;

33 (d) The address or location of the premises where  
34 licensed raffles are to be held;

35 (e) Information as may be required by the commissioner  
36 to satisfy him that the applicant meets the requirements of:

37 (1) Being a charitable or public service organization as  
38 defined by this article; and

39 (2) Being in existence in this state for at least one year  
40 prior to filing an application for a raffle license;

41 (f) Designate the date or dates and the time or times  
42 when the raffle occasions will be held;

43 (g) Name the owner of the premises where the raffle  
44 occasions are to be held; and providing a copy of all rental  
45 agreements involved if such premises are leased or  
46 subleased by the applicant from the owner or lessee;

47 (h) State whether the applicant has ever had a previous  
48 application for any raffle license refused, or whether any  
49 previous raffle license has been revoked or suspended;

50 (i) State the charitable or public service purpose or  
51 purposes for which the raffle proceeds will be expended;

52 (j) Provide statements to the effect that the individuals  
53 specified in subdivision (c) of this section and the officers of  
54 the applicant understand:

55 (1) That it is a violation of the article to allow any  
56 persons other than those authorized by this article to  
57 conduct the raffle or concessions operated in conjunction  
58 therewith;

59 (2) That it is required that the reports be filed and the  
60 records kept as provided by this article; and

61 (3) That it is a crime to violate the provisions of this  
62 article and, that a violation of such provisions may result in  
63 suspension or revocation of the raffle license and denial of  
64 applications for subsequent raffle licenses;

65 (k) Provide a sworn statement by an authorized  
66 representative of the applicant that the information  
67 contained in the application is true to the best of his  
68 knowledge;

69 (l) Provide a list and description of estimated expenses  
70 to be incurred in connection with the holding of the raffle  
71 occasions and any concessions operated and the name and  
72 address of each payee. If a concession is operated in  
73 accordance with the provisions of section thirteen of this  
74 article, a copy of any written agreement or an explanation  
75 of any oral agreement providing for any type of  
76 remuneration to be received by the concession operator  
77 shall be attached to the application;

78 (m) A list of the names and addresses of all officers and  
79 members of the board of directors, governors or trustees, if  
80 any, of the applicant organization; and

81 (n) Any other necessary and reasonable information  
82 which the commissioner may require.

**§47-21-9. Amendment of license.**

1 If circumstances beyond the control of the licensee  
2 organization prohibit it from holding any raffle occasion in  
3 accordance with the information provided by it in its  
4 license application form, the licensee organization may  
5 request approval by the commissioner to modify the terms  
6 and conditions of its license.

**§47-21-10. Licensee rules and regulations.**

1 Each licensee may adopt rules and regulations, not

2 inconsistent with or in violation of the provisions of this  
3 article, or rules or regulations promulgated hereunder, to  
4 govern the conduct of raffle occasions.

5 Any rules and regulations adopted by the licensee shall be  
6 made available for inspection at all raffle occasions held.  
7 Any such rules and regulations adopted are a part of the  
8 records required to be kept by section sixteen of this article.

**§47-21-11. Limits on prizes awarded—General provisions.**

1 During the period of a license, the total value of all prizes  
2 awarded by a licensee shall not exceed in value sixty-five  
3 percent of the gross proceeds collected during such period  
4 or the sum of one hundred thousand dollars as determined  
5 and assigned under this section, whichever amount shall be  
6 less: *Provided*, That notwithstanding the foregoing  
7 limitation, the total prizes awarded by a licensee, or in the  
8 aggregate by two or more limited occasion licensees holding  
9 a joint raffle occasion, for any raffle occasion held pursuant  
10 to a limited occasion license, may not exceed in value seven  
11 thousand five hundred dollars.

12 Prizes may be money, real or personal property, or  
13 merchandise other than beer, wine, spirits or alcoholic  
14 liquor as defined in section five, article one, chapter sixty of  
15 this code. If the prizes are real or personal property or  
16 merchandise, the value assigned to them is their fair market  
17 value at the time of acquisition for the raffle or at the time of  
18 purchase.

**§47-21-12. Compensation generally prohibited.**

1 Except as otherwise provided in section thirteen of this  
2 article, no individual who participates in any manner in the  
3 conduct of a raffle occasion or the operation of a concession  
4 in conjunction with a raffle occasion may receive or accept  
5 either directly or indirectly any commission, wage, salary,  
6 reward, tip, donation, gratuity or other form of  
7 compensation or remuneration, regardless of the source, for  
8 his work, labor or services.

**§47-21-13. Compensation for concession operator: concession operated by charitable or public service organization.**

1 A licensee may allow any person to operate concessions in  
2 conjunction with raffle occasions, and to be compensated  
3 for such operation, in accordance with the following  
4 provisions:

5 (a) The licensee organization is one which meets or  
6 holds functions other than raffle occasions on a regular  
7 basis;

8 (b) The concession to be operated at the raffle occasion  
9 is operated regularly at such meetings or functions;

10 (c) The person which operates the concession at such  
11 regular meetings or functions is the same which operates  
12 the concessions at the raffle occasion; and

13 (d) The terms of the agreement under which the person  
14 operates the concession at the raffle occasion are the same  
15 terms under which the concession is operated at the regular  
16 meetings or functions: *Provided*, That a copy of such  
17 agreement is filed at the time the application is made and  
18 any changes thereto are filed within ten days of being made.

19 In addition, any charitable or public service organization  
20 as defined in section two of this article may operate a  
21 concession at any raffle occasions held by a licensee:  
22 *Provided*, That the net proceeds it receives from that  
23 concession are used solely for the charitable or public  
24 service purposes of that organization.

**§47-21-14. Rent or other fee for use of premises; rent or other  
fee received by licensee prohibited;  
reimbursement of expenses.**

1 (a) No owner or lessee, including his agent, of premises  
2 on which raffle occasions are held by one or more licensees  
3 holding annual raffle licenses may receive rent or other fee  
4 in any amount for the holding of more than two raffle  
5 occasions per month on his premises. No owner or lessee,  
6 including his agent, of premises on which raffle occasions  
7 are held by one or more licensees holding limited occasion  
8 licenses may receive rent or other fee in any amount for the  
9 holding of more than twelve raffle occasions per year on his  
10 premises: *Provided*, That the total number of raffle  
11 occasions for which any owner or lessee, including his

12 agent, may receive rent or other fee in any one year may not  
13 exceed twenty-four.

14 (b) No licensee may receive, either directly or indirectly,  
15 rent or other fee in any amount for permitting its premises  
16 to be used by any person, including any auxiliaries or other  
17 organizations or entities otherwise associated with the  
18 licensee, to hold a raffle occasion.

19 (c) Nothing in this section may prevent such owners,  
20 lessees or licensees from being reimbursed, by any licensee  
21 who does not pay rent or other fee to use the premises to  
22 conduct a raffle occasion, for the reasonable, necessary and  
23 actual expenses incurred by such use, not to exceed fifty  
24 dollars.

**§47-21-15. Payment of reasonable expenses from proceeds; net  
proceeds disbursement.**

1 (a) The reasonable, necessary and actual expenses  
2 incurred in connection with the conduct of raffle occasions,  
3 not to exceed ten percent of the gross proceeds collected  
4 during a license period, may be paid out of the gross  
5 proceeds from the conduct of a raffle, including, but not  
6 limited to:

7 (1) Rent paid for the use of the premises: *Provided*, That  
8 a copy of the rental agreement was filed with the raffle  
9 license application with any modifications thereto to be  
10 filed within ten days of being made;

11 (2) The cost of custodial services;

12 (3) The cost to the licensee organization for equipment  
13 and supplies used to conduct the raffle occasion;

14 (4) The cost to the licensee organization for advertising  
15 the raffle occasion; and

16 (5) The cost of hiring security personnel.

17 (b) The actual cost to the licensee for prizes, not to  
18 exceed the amounts as specified in section eleven of this  
19 article, may be paid out of the gross proceeds from the  
20 conduct of the raffle.

21 (c) The cost of any refreshments, souvenirs or any other  
22 items sold or otherwise provided through any concession to  
23 the patrons may not be paid for out of the gross proceeds  
24 from the raffle occasion. The licensee shall expend all net  
25 raffle proceeds and any interest earned thereon for the  
26 charitable or public service purposes stated in the  
27 application within one year after the expiration of the  
28 license under which the raffle occasions were conducted. A  
29 licensee which does not qualify as a qualified recipient  
30 organization may apply to the commissioner at the time it  
31 applies for a raffle license or as provided in subsection (e) of  
32 this section for permission to apply any or all of its net  
33 proceeds to directly support a charitable or public service  
34 activity or endeavor which it sponsors.

35 (d) No gross proceeds from any raffle operation may be  
36 devoted or in any manner used by any licensee or qualified  
37 recipient organization for the construction, acquisition,  
38 improvement, maintenance or repair of real or personal  
39 property except that which is used exclusively for one or  
40 more charitable or public service purposes or as provided in  
41 subdivision (3), subsection (a) of this section.

42 (e) Any licensee which, in good faith, finds itself unable  
43 to comply with the requirements of the foregoing provisions  
44 of this section shall apply to the commissioner for  
45 permission to expend its net proceeds for one or more  
46 charitable or public service purposes other than that stated  
47 in its license application or for permission to expend its net  
48 proceeds later than the one-year time period specified in  
49 this section. The application shall be on a form furnished by  
50 the commissioner and shall include the particulars of the  
51 requested changes and the reasons for the changes. The  
52 application shall be filed no later than sixty days before the  
53 end of the one-year period specified in this section. In the  
54 case of an application to extend the time in which the net  
55 proceeds are to be expended for a charitable or public  
56 service purpose, the licensee shall file such periodic reports  
57 with the commissioner as the commissioner directs until the  
58 proceeds are so expended.

**§47-21-16. Records; commissioner audit.**

1 Any licensee which holds a raffle occasion as provided by

2 this article shall maintain a separate account and separate  
3 bookkeeping procedure for its raffle operations. All records  
4 required by this article shall be maintained for at least three  
5 years and shall be open to the commissioner for reasonable  
6 inspection. Whenever the commissioner has reasonable  
7 cause to believe a licensee has violated any of the provisions  
8 of this article, he may perform or cause to be performed an  
9 audit of the licensee's books and records.

**§47-21-17. Advertising.**

1 A licensee may advertise its raffle occasions in a manner  
2 reasonably necessary to promote the occasion.

**§47-21-18. Fraud; penalties.**

1 In addition to any other offense set forth in this code, any  
2 person who or licensee which knowingly conducts or  
3 participates in a fraudulently or deceptively conducted  
4 raffle with intent to defraud is guilty of a felony, and, upon  
5 conviction thereof, shall be fined not less than five hundred  
6 nor more than ten thousand dollars, or imprisoned in the  
7 penitentiary not less than one nor more than five years, or  
8 both fined and imprisoned.

**§47-21-19. Obtaining license fraudulently; penalty.**

1 In addition to any other offense set forth in this code, any  
2 person who or licensee which knowingly obtains or assists  
3 another in obtaining a raffle license under false, deceptive  
4 or fraudulent pretenses is guilty of a misdemeanor, and,  
5 upon conviction thereof, shall be fined not less than five  
6 hundred nor more than ten thousand dollars.

**§47-21-20. Violation of provisions; penalties.**

1 Any person who knowingly violates any provision of this  
2 article, other than the provisions of sections eighteen and  
3 nineteen, is guilty of a misdemeanor, and, upon conviction  
4 thereof, shall be fined not less than one hundred nor more  
5 than one thousand dollars; and, upon a second or  
6 subsequent conviction thereof, shall be fined not less than  
7 one hundred nor more than one thousand dollars or  
8 imprisoned not more than one year or both fined and  
9 imprisoned.

**§47-21-21. Administration; rules and regulations.**

1 (a) The commissioner shall promulgate rules and  
2 regulations to administer the provisions of this article in  
3 accordance with the provisions of chapter twenty-nine-a of  
4 this code.

5 (b) The commissioner shall deny an application for a  
6 license or modification thereof if he finds that the issuance  
7 thereof would be in violation of the provisions of this  
8 article.

9 (c) The commissioner may revoke, suspend or refuse to  
10 renew a license if the licensee or any member of a licensee  
11 organization has been convicted pursuant to section  
12 eighteen or nineteen of this article and the commissioner  
13 finds that it would be in the public interest to do so; or if the  
14 licensee has violated any of the provisions of this article:  
15 *Provided*, That before revoking or suspending a license  
16 issued under the authority of this article, the commissioner  
17 shall give at least ten days, three days for a limited occasion  
18 license, notice to the licensee. Notice shall be in writing,  
19 state the reason for revocation or suspension and designate  
20 a time and place when the licensee may show cause why the  
21 license should not be revoked or suspended. The notice re-  
22 quired by this section shall be by personal or substituted ser-  
23 vice, in accordance with the West Virginia rules of civil pro-  
24 cedure for trial courts of record, on the person who applied  
25 for the license on behalf of the licensee. The licensee may,  
26 at the time designated for the hearing, present evidence in  
27 its behalf and be represented by counsel. A decision of  
28 the commissioner revoking or suspending a license is sub-  
29 ject to judicial review upon the appeal of a licensee. Such de-  
30 cision shall be subject to judicial review in the same manner  
31 as other decisions of the commissioner.

32 (d) The commissioner may suspend, revoke or refuse to  
33 renew any license issued hereunder for a material failure to  
34 maintain the records or file the reports required by this  
35 article if the commissioner finds that such failure will  
36 substantially impair the commissioner's ability to  
37 administer the provisions of this article with regard to such  
38 licensee.



39 (e) The commissioner shall promulgate reasonable rules  
40 and regulations necessary to the administration of this  
41 article.

42 (f) The provisions of article five, chapter twenty-nine-a  
43 of this code apply to the denial, revocation, suspension of or  
44 refusal to renew a license hereunder.

45 (g) The burden of proof in any administrative or court  
46 proceeding is on the applicant to show cause why a raffle  
47 license should be issued or renewed and on the licensee to  
48 show cause why its license should not be revoked or  
49 suspended.

50 (h) Notwithstanding any other provision of this article,  
51 the commissioner may issue an emergency order  
52 suspending a raffle license under the following  
53 circumstances and in the following manner:

54 (1) An emergency order may be issued only when the  
55 commissioner believes that:

56 (i) There has been a criminal violation of this article;

57 (ii) Such action is necessary to prevent a criminal  
58 violation of this article; or

59 (iii) Such action is necessary for the immediate  
60 preservation of the public peace, health, safety, morals,  
61 good order or general welfare.

62 (2) The emergency order shall set forth the grounds  
63 upon which it is issued, including a statement of facts  
64 constituting the alleged emergency necessitating such  
65 action. This order shall be served by personal or substituted  
66 service on the licensee or the person who applied for the  
67 license on behalf of the licensee.

68 (3) The emergency order is effective immediately upon  
69 issuance and service upon the licensee.

70 (4) Within five days after issuance of an emergency  
71 order, the commissioner shall set a time and place for a  
72 hearing wherein the licensee may appear and show cause  
73 why its license should not be revoked.

**§ 47-21-22. Filing of reports.**

1 Each licensee holding an annual, limited or state fair

2 license shall file with the commissioner a financial report  
 3 summarizing its raffle operation within thirty days after  
 4 the expiration date of such license.

5 The reports required by this section shall contain the  
 6 name, address and social security number of any individual  
 7 who received during the course of a raffle occasion prizes  
 8 the aggregate value of which exceeded one hundred dollars,  
 9 and other information required by the commissioner.

**§47-21-23. Filing of copy of license; application open to public inspection.**

1 Whenever a license is granted pursuant to this article, the  
 2 commissioner shall cause a copy of the license to be filed  
 3 and recorded with the clerk of the county commission of  
 4 the county in which the raffle occasions are to be held. A  
 5 copy of the application shall be made available for public  
 6 inspection in the office of the commissioner.

**§47-21-24. County option election.**

1 The county commission of any county is authorized to call  
 2 a local option election for the purpose of determining the  
 3 will of the voters as to whether the provisions of this article  
 4 shall continue in effect in such county.

5 A petition for a local option election shall be in the form  
 6 specified in this section and shall be signed by qualified  
 7 voters residing within such county equal to at least ten  
 8 percent of the individuals qualified to vote within such  
 9 county at the last general election. The petition may be in  
 10 any number of counterparts and is sufficient if  
 11 substantially in the following form:

12           **PETITION ON LOCAL OPTION ELECTION**  
 13           **RESPECTING THE CONDUCT OF**  
 14           **RAFFLES FOR**  
 15           **CHARITABLE PURPOSES**  
 16           **IN . . . . . COUNTY,**  
 17           **WEST VIRGINIA**

18 Each of the undersigned certifies that he or she is an  
 19 individual residing in . . . . . County, West Virginia, and  
 20 is duly qualified to vote in that county under the laws of the  
 21 state, and that his or her name, address and the date of  
 22 signing this petition are correctly set forth below.

23 The undersigned petition the county commission to call  
 24 and hold a local option election at (1) a special election or (2)  
 25 the next primary, general or special election [the petition  
 26 shall specify (1) or (2)] upon the following question: Shall  
 27 the provisions of article twenty-one, chapter forty-seven of  
 28 the code of West Virginia, one thousand nine hundred  
 29 thirty-one, as amended, continue in effect in .....  
 30 County, West Virginia?

31	Name	Address	Date
32	.....	.....	.....
33	(Each individual signing must specify either his post-office		
34	address or his street number.)		

35 Upon the filing of a petition for a local option election in  
 36 accordance with the provisions of this section, the county  
 37 commission shall enter an order calling a local option  
 38 election as specified in the petition. The county commission  
 39 shall give notice of such local option election by publication  
 40 thereof as a Class II-0 legal advertisement in compliance  
 41 with the provisions of article three, chapter fifty-nine of  
 42 this code, and the publication area for such publication  
 43 shall be the county. The notice shall be so published within  
 44 fourteen consecutive days next preceding the election.

45 Each individual qualified to vote in the county at any  
 46 primary, general or special election, shall likewise be  
 47 qualified to vote at the local option election. The election  
 48 officers appointed and qualified to serve as such at any  
 49 primary, general or special election shall conduct the local  
 50 option election. If the local option election is to be held at  
 51 the same time as a primary, general or other special  
 52 election, it shall be held in connection with and as a part of  
 53 that primary, general or special election. The ballots in the  
 54 local option election shall be counted and returns made by  
 55 the election officers and the results certified by the  
 56 commissioners of election to such county commission which  
 57 shall canvass the ballots, all in accordance with the laws of  
 58 the state of West Virginia relating to primary and general  
 59 elections insofar as the same are applicable. The county  
 60 commission shall, without delay, canvass the ballots cast at  
 61 said local option election and certify the result thereof.

**§47-21-25. Prohibited acts by convicted persons.**

1 Any person convicted of any felony, or of a misdemeanor  
2 for a gambling offense, or of a violation of any provision of  
3 article twenty of this chapter, is prohibited from directly or  
4 indirectly obtaining a raffle license, conducting a raffle  
5 game, operating a concession or leasing or providing to a  
6 licensee any premises where raffle occasions may be held,  
7 within ten years from such conviction.

**§47-21-26. Restrictions on use of raffle equipment.**

1 A licensee may use only raffle equipment which it owns or  
2 which it borrows without compensation, or leases for a  
3 reasonable and customary amount, from another licensee.

**§47-21-27. Proceeds of state fair.**

1 The Legislature declares that the net proceeds of any  
2 raffle game which accrue to the West Virginia state fair are  
3 considered used for charitable or public service purposes as  
4 defined in section two of this article. Any proceeds allowed  
5 by the state fair board to be paid to or retained by persons  
6 who conduct raffle occasions at the state fair are deemed to  
7 be expenses incurred by the state fair board.

**§47-21-28. State fair raffle license; rules and regulations.**

1 The West Virginia state fair board may apply annually to  
2 the tax commissioner for a state fair raffle license to provide  
3 for the conduct of raffle occasions at the state fair. The  
4 license shall permit the state fair board to have one or more  
5 persons conduct raffle occasions at the state fair who have  
6 conducted raffle occasions on a regular basis for at least one  
7 year prior to the date of the state fair board's application. A  
8 license fee of five hundred dollars shall be paid to the tax  
9 commissioner for the state fair raffle license. The provisions  
10 of sections eleven, twelve, fourteen, fifteen and twenty-six  
11 of this article do not apply to a state fair raffle license. No  
12 state fair raffle license may be issued unless the application  
13 includes a copy of any lease or agreement entered into  
14 between the state fair board and the persons who are to  
15 conduct raffle occasions at the state fair. The state fair  
16 board may adopt reasonable rules and regulations, not  
17 inconsistent with or in violation of the provisions of this

18 article, to govern the holding of raffle occasions at the state  
19 fair.

**§47-21-29. Severability.**

1 If, for any reason, any section, sentence, clause, phrase or  
2 provision of this article or the application thereof to any  
3 person or circumstance is held unconstitutional or invalid,  
4 such unconstitutionality or invalidity shall not affect other  
5 sections, sentences, clauses, phrases or provisions or their  
6 application to any other person or circumstance, and to this  
7 end each and every section, sentence, clause, phrase or  
8 provision of this article is hereby declared to be severable.

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## CHAPTER 159

(Com. Sub. for H. B. 1405—By Delegate Minard and Delegate Murensky)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine, relating to the West Virginia real estate time-sharing act; short title; purposes; scope; definitions; contracts for purchase of time-share periods; public offering statement; escrow accounts; surety bonds; non-disturbance instruments; reservation agreements; escrows; cancellation; advertising materials; recordkeeping by seller; management; criminal penalties; civil penalties; discharge of management entity; assessment of common expense; liens for overdue assessments; mechanic's liens; insurance; transfer of seller's interest to third party; exchange programs; license required to sell; purchasers' remedies; partition; securities; zoning and building; regulation; annual fee for each time-share period in plan; trust fund created; taxation.

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

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

**ARTICLE 9. WEST VIRGINIA REAL ESTATE TIME-SHARING ACT.**

- §36-9-1. Short title.
- §36-9-2. Purpose.
- §36-9-3. Scope.
- §36-9-4. Definitions.
- §36-9-5. Contracts for purchase of time-share periods.
- §36-9-6. Public offering statement.
- §36-9-7. Escrow accounts; surety bonds; nondisturbance instruments.
- §36-9-8. Reservation agreements; escrows.
- §36-9-9. Cancellation.
- §36-9-10. Advertising materials.
- §36-9-11. Recordingkeeping by seller.
- §36-9-12. Management.
- §36-9-13. Discharge of managing entity.
- §36-9-14. Assessment of common expenses.
- §36-9-15. Liens for overdue assessments; mechanic's liens; insurance.
- §36-9-16. Transfer of seller's interest to third party.
- §36-9-17. Exchange programs.
- §36-9-18. License required to sell.
- §36-9-19. Purchaser's remedies.
- §36-9-20. Partition.
- §36-9-21. Securities.
- §36-9-22. Zoning and building.
- §36-9-23. Regulation by division.
- §36-9-24. Annual fee for each time-share period in plan.
- §36-9-25. West Virginia real estate time-sharing trust fund.
- §36-9-26. Taxation.

**§36-9-1. Short title.**

- 1 This article shall be known and may be cited as the "West
- 2 Virginia time-sharing act."

**§36-9-2. Purposes.**

- 1 The purposes of this article are to:
- 2 (a) Give statutory recognition to real property time-sharing
- 3 in the state;
- 4 (b) Establish procedures for the creation, sale and opera-
- 5 tion of time-sharing plans; and
- 6 (c) Require every time-sharing plan offered for sale or
- 7 created and existing in this state to be subjected to the provi-
- 8 sions of this article.

**§36-9-3. Scope.**

- 1 (a) This article applies only to time-sharing plans consisting

2 of more than seven time-sharing periods other than con-  
3 minimum fee ownership time-sharing plans, except that sec-  
4 tions six, ten, eleven, twelve, thirteen, seventeen, twenty,  
5 twenty-one, twenty-four, twenty-five and twenty-six of this  
6 article shall apply to all time-sharing plans.

7 (b) All time-sharing accommodations or facilities which are  
8 located outside the state but offered for sale in this state shall  
9 be subject to all of the provisions of this article except sec-  
10 tions eleven through sixteen and twenty through twenty-three.

11 (c) Notwithstanding other provisions of this article, either  
12 expressed or implied, to the contrary, it is the legislative intent  
13 that nothing herein be deemed to alter the existing procedure  
14 for the assessment and collection of ad valorem taxes on ac-  
15 commodatons or facilities subject to a time-sharing plan.

#### §36-9-4. Definitions.

1 As used in this article:

2 (a) "Accommodations" means any apartment, condominium  
3 or cooperative unit, cabin, lodge, hotel or motel room or any  
4 other private or commercial structure which is situated on  
5 real property and designed for occupancy by one or more  
6 individuals;

7 (b) "Assessment" means the share of funds required for  
8 the payment of common expenses which is assessed from time  
9 to time against each purchaser by the managing entity;

10 (c) "Common expenses" means those expenses properly  
11 incurred for the maintenance, operation and repair of all ac-  
12 commodatons or facilities, or both, constituting the time-  
13 sharing plan;

14 (d) "Contract" means any agreement conferring the rights  
15 and obligations of the time-sharing plan on the purchaser;

16 (e) "Developer" means the person creating a time-sharing  
17 plan;

18 (f) "Division" means the division of land sales and condo-  
19 miniums in the office of the state auditor;

20 (g) "Facilities" means any structure, service, improvement

21 or real property, improved or unimproved, which is made  
22 available to the purchasers of a time-sharing plan;

23 (h) "Managing entity" means the person responsible for  
24 operating and maintaining the time-sharing plan;

25 (i) "Offer to sell," "offer for sale," "offered for sale" or  
26 "offer" means solicitation of purchasers, the taking of reser-  
27 vations or any other method whereby a purchaser is offered  
28 the opportunity to participate in a time-sharing plan;

29 (j) "Owners' association" means the association made up  
30 of all purchasers of a time-sharing plan who have purchased  
31 a fee simple interest in real property;

32 (k) "Purchaser" means any person who is buying or who  
33 has bought a time-share period in a time-sharing plan;

34 (l) "Seller" means any developer or any other person, or  
35 agent or employee thereof, who is offering time-share pe-  
36 riods for sale to the public in the ordinary course of business,  
37 except a person who has acquired a time-share period for his  
38 own occupancy and later offers it for resale;

39 (m) "Time-share period" means that period of time when a  
40 purchaser of a time-sharing plan is entitled to the possession  
41 and use of the accommodations or facilities, or both, of a  
42 time-sharing plan;

43 (n) "Time-sharing plan" means any arrangement, plan,  
44 scheme or similar device, other than an exchange program,  
45 whether by membership, agreement, tenancy in common, sale,  
46 lease, deed, rental agreement, license or right-to-use agree-  
47 ment or by any other means, whereby a purchaser, in exchange  
48 for a consideration receives a right to use accommodations or  
49 facilities, or both, for a specific period of time less than a  
50 full year during any given year, but not necessarily for con-  
51 secutive years, and which extends for a period of more than  
52 three years; and

53 (o) "Time-share unit" means an accommodation or facility  
54 of a time-sharing plan which is divided into time-share periods.

**§36-9-5. Contracts for purchase of time-share periods.**

1 No seller of a time-sharing plan shall fail to utilize, and



2 furnish each purchaser of such plan a fully completed copy  
3 of, a contract pertaining to such sale, which contract shall  
4 include the following information:

5 (a) The actual date the contract is executed by all parties;

6 (b) The names and addresses of the seller, the developer  
7 and the time-sharing plan;

8 (c) The total financial obligation of the purchaser, in-  
9 cluding the initial purchase price and any additional charges  
10 to which the purchaser may be subject, such as reservation,  
11 maintenance, management and recreation charges: *Provided*,  
12 That those costs which cannot be specified exactly shall be  
13 estimated and the purchaser shall be notified that said costs  
14 are subject to change;

15 (d) The estimated date of availability of each accommoda-  
16 tion or facility which is not completed at the time the con-  
17 tract is executed by the seller and purchaser;

18 (e) A description of the nature and duration of the time-  
19 share period being sold, including whether any interest in  
20 real property is being conveyed and the specific number of  
21 years or months constituting the term of the contract;

22 (f) Immediately prior to the space reserved in the con-  
23 tract for the signature of the purchaser, in boldfaced and  
24 conspicuous type which shall be larger than the type in the  
25 remaining text of the contract, substantially the following  
26 statements:

27 **“YOU MAY CANCEL THIS CONTRACT WITHOUT**  
28 **ANY PENALTY OR OBLIGATION WITHIN TEN DAYS**  
29 **FROM THE DATE YOU SIGN THIS CONTRACT, AND**  
30 **UNTIL TEN DAYS AFTER YOU RECEIVE THE PUBLIC**  
31 **OFFERING STATEMENT.**

32 **IF YOU DECIDE TO CANCEL THIS CONTRACT,**  
33 **YOU MUST NOTIFY THE SELLER IN WRITING OF**  
34 **YOUR INTENT TO CANCEL. YOUR NOTICE OF CAN-**  
35 **CELLATION SHALL BE EFFECTIVE UPON THE DATE**  
36 **SENT AND SHALL BE SENT TO (Name of Seller) AT**  
37 **(Address of Seller). NO PURCHASER SHOULD RELY**

38 UPON REPRESENTATIONS OTHER THAN THOSE IN-  
39 CLUDED IN THIS CONTRACT.”

40 If no interest in real property is being conveyed, the con-  
41 tract shall also contain the following statement:

42 “YOU MAY ALSO CANCEL THIS CONTRACT AT  
43 ANY TIME AFTER THE ACCOMMODATIONS OR FA-  
44 CILITIES ARE NO LONGER AVAILABLE AS PRO-  
45 VIDED IN THIS CONTRACT”;

46 (g) A statement that oral representations cannot be re-  
47 lied upon and that the seller makes no representations other  
48 than those contained in the contract and the public offering  
49 statement;

50 (h) A statement that, in the event the purchaser cancels  
51 the contract during a ten-day cancellation period, the de-  
52 veloper shall refund to the purchaser all payments made  
53 under the contract within twenty days after receipt of notice  
54 of cancellation;

55 (i) If no fee interest in real property is being conveyed,  
56 a statement that, in the event of any cancellation by the  
57 purchaser after the ten-day cancellation periods, the refund  
58 shall be the total amount of all payments made by the  
59 purchaser under the contract reduced by the proportion of  
60 any contract benefits the purchaser actually has received  
61 or has had the right to receive under the contract during  
62 the time preceding the date when the cancellation becomes  
63 effective; and

64 (j) If the seller is to transfer a fee interest in real property  
65 to the purchaser, the seller shall furnish a contract for sale  
66 to the purchaser at least ten days before the date of  
67 closing.

**§36-9-6. Public offering statement.**

1 Each developer shall file with the division a complete  
2 copy of the public offering statement to be used in the sale  
3 of the time-share periods. Until the division approves such  
4 filing, any contract regarding the sale of the time-sharing  
5 plan which is the subject of the public offering statement

6 shall be voidable by the purchaser. The proposed offering  
7 statement shall be received, reviewed and monitored in the  
8 following manner:

9 (a) The division shall, upon receiving a public offering  
10 statement from a developer, mail the developer an acknowl-  
11 edgement of receipt. The failure of the division to send such  
12 acknowledgement shall not, however, relieve the developer  
13 from the duty of complying with this section;

14 (b) Within twenty days after receipt of a public offering  
15 statement, the division shall determine whether the proposed  
16 public offering statement is adequate to meet the require-  
17 ments of this section and shall notify the developer by mail  
18 that the division has either approved the public offering  
19 statement or found specified deficiencies. If the division fails  
20 to respond within twenty days, the filing shall be deemed  
21 approved. The developer may correct the deficiencies; and,  
22 within fifteen days after receipt of materials filed by the  
23 developer to correct the deficiencies found by the division,  
24 the division shall notify the developer by mail that the division  
25 has either approved the filing or found additional specified  
26 deficiencies. If the division fails to respond within fifteen  
27 days, the filing shall be deemed approved;

28 (c) Any material change to the public offering statement  
29 shall be filed with the division within fifteen days of the  
30 change. The division shall approve, or cite for deficiencies,  
31 the change within ten days after the date of filing. If the  
32 division fails to respond within ten days, the change shall  
33 be deemed approved;

34 (d) Upon filing a public offering statement with the  
35 division, a developer shall pay a filing fee of fifty cents for  
36 each time-share period which is to be part of the proposed  
37 time-sharing plan;

38 (e) Every public offering statement shall contain the fol-  
39 lowing:

40 (1) A cover page stating:

41 (A) The name of the time-sharing plan; and

42 (B) The following, in conspicuous type:

43 "THIS PUBLIC OFFERING STATEMENT CONTAINS  
44 IMPORTANT MATTERS TO BE CONSIDERED IN AC-  
45 QUIRING A TIME-SHARE PERIOD. THE STATEMENTS  
46 CONTAINED HEREIN ARE ONLY SUMMARY IN NA-  
47 TURE. A PROSPECTIVE PURCHASER SHOULD REFER  
48 TO ALL REFERENCES, EXHIBITS HERETO, CON-  
49 TRACT DOCUMENTS AND SALES MATERIALS. ORAL  
50 REPRESENTATIONS CANNOT BE RELIED UPON AS  
51 CORRECT STATEMENTS OF SELLER REPRESENTA-  
52 TIONS. REFER TO THIS DOCUMENT FOR CORRECT  
53 REPRESENTATIONS";

54 (2) A separate index of the contents and exhibits of the  
55 public offering statement;

56 (3) A text, which shall be a summary of the disclosure  
57 required by paragraphs five through thirteen and subsection  
58 (f), and a cross-reference to the location in the public offering  
59 statement of each exhibit;

60 (4) Exhibits, setting forth in detail the information sum-  
61 marized in the text of the public offering statement;

62 (5) An explanation of the time-share form of ownership  
63 that is being offered;

64 (6) A general description of the time-sharing plan, in-  
65 cluding the numbers of time-share units and time-share per-  
66 iods which are a part of the plan;

67 (7) An explanation of the purchaser's rights of can-  
68 cellation;

69 (8) A copy of each executed escrow agreement and, if  
70 applicable, any nondisturbance instrument and/or notice to  
71 creditors;

72 (9) An explanation of the status of the title to the  
73 real property underlying the time-sharing plan, including a  
74 statement of the existence of any lien, defect, judgment or  
75 other encumbrance affecting the title to the property;

76 (10) A description of any judgment against the seller or

77 the managing entity and the status of any pending suit to  
78 which the seller or the managing entity is a party, which  
79 is material to the time-sharing plan, and any other suit  
80 material to the time-sharing plan of which the seller has actual  
81 knowledge;

82 (11) A description of the insurance coverage provided for  
83 the benefit of the purchasers;

84 (12) A statement of whether the time-sharing plan is partic-  
85 ipating in an exchange program and, if so, the name and  
86 address of the exchange company offering the exchange pro-  
87 gram; and

88 (13) Any other information that the seller, with the ap-  
89 proval of the division, desires to include in the public offer-  
90 ing statement;

91 (f) A public offering statement regarding a time-sharing  
92 plan shall contain or fully and accurately disclose the fol-  
93 lowing:

94 (1) The name and address of the developer and the identity  
95 of the chief operating officer or principal directing the creation  
96 and sale of the time-sharing plan;

97 (2) The name and address of the accommodations and  
98 facilities;

99 (3) The schedule of commencement and completion of all  
100 improvements;

101 (4) The name of any person who will or may have the  
102 right to alter, amend or add to the charges to which the  
103 purchaser may be subject and the terms and conditions  
104 under which such alterations, amendments or additions may  
105 be imposed;

106 (5) The documents, if any, creating the time-sharing plan;

107 (6) Any contracts or leases to be signed by purchasers;

108 (7) The identity of the managing entity and the manner,  
109 if any, whereby the seller may change the managing entity  
110 or its control;

111 (8) A copy of the rules, regulations, conditions or limita-  
112 tions on the use of the accommodations or facilities available  
113 to purchasers;

114 (9) Any restrictions on the transfer of any time-share peri-  
115 od; and

116 (10) A description of the recreational and other facilities  
117 of the time-sharing plan;

118 (g) In addition, a public offering statement regarding any  
119 time-sharing plan which transfers fee simple interests in real  
120 property shall also contain or fully and accurately disclose  
121 the following:

122 (1) All unusual and material circumstances, features and  
123 characteristics of the real property;

124 (2) An estimated operating budget and a schedule of each  
125 purchaser's expenses; and

126 (3) Any service, maintenance or recreation contracts or  
127 leases that may be canceled by the purchasers.

**§36-9-7. Escrow accounts; surety bonds; nondisturbance instru-  
ments.**

1 (a) It is a violation of this article for a seller of a time-  
2 sharing plan to fail to:

3 (1) Place one hundred percent of all funds which are re-  
4 ceived from purchasers of such time-sharing plan in an escrow  
5 account during the ten-day cancellation periods provided for  
6 by this chapter. The establishment of such an escrow account  
7 shall be evidenced by an escrow agreement between the es-  
8 crow agent and the seller, the provisions of which shall include:

9 (A) That its purpose is to protect the purchaser's right to a  
10 refund if he cancels the contract for the sale of a time-sharing  
11 plan within a ten-day cancellation period;

12 (B) That funds may be disbursed to the seller by the es-  
13 crow agent from the escrow account only after expiration of  
14 the purchasers' ten-day cancellation periods; and

15 (C) That the escrow agent may release funds to the seller  
16 from the escrow account only after receipt of a sworn state-  
17 ment from the seller that no cancellation notice postmarked on  
18 a date within the ten-day cancellation period was received from  
19 the purchasers whose funds are being released to the seller.

20 (2) Place fifty percent of the funds received from purchas-  
21 ers, after the ten-day cancellation periods have expired, in an  
22 escrow account when a time-sharing plan is being sold which  
23 does not convey fee interests in real property:

24 (A) The establishment of such escrow accounts shall be  
25 evidenced by an executed escrow agreement between the es-  
26 crow agent and the seller, the provisions of which shall include:

27 (i) That its purpose is to protect the purchaser's right to a  
28 refund, at any time the accommodations or facilities of the  
29 time-sharing plan are no longer available as provided in the  
30 contract entered into by the seller and the purchaser, in an  
31 amount representing the purchaser's pro rata share of the  
32 moneys escrowed;

33 (ii) That funds may be disbursed to the seller by the  
34 escrow agent from the escrow account periodically in the  
35 ratio of the amount of time the purchasers have already used  
36 or had the right to use the accommodations or facilities of  
37 the time-sharing plan at the time of the disbursement in  
38 relation to the total time sold to the purchasers; and

39 (iii) That the escrow agent may release funds to the seller  
40 from the escrow account only after receipt of a statement  
41 signed by the purchaser indicating that such purchaser has  
42 used or has had the right to use a specific number of days out  
43 of the total time period purchased. If a purchaser refuses to  
44 sign such a statement when tendered, the seller may submit  
45 a sworn statement to the escrow agent that the purchaser used  
46 or had the right to use a specific number of days, but that the  
47 purchaser refused to sign a statement to that effect.

48 (B) The seller may elect to terminate use of an escrow  
49 account established pursuant to this paragraph if, at a later  
50 date, such seller complies with the requirements of subdivision  
51 (4) or subdivision (5). Any funds remaining in such escrow

52 account at the time a seller elects to terminate its use shall be  
53 disbursed to the seller by the escrow agent only when the seller  
54 has transmitted to the escrow agent and to each purchaser  
55 affected a copy of the surety bond or, if applicable, a nondis-  
56 turbance instrument or notice to creditors. A sworn statement  
57 from the seller that the purchasers have been furnished these  
58 required documents shall also be given to the escrow agent  
59 and the division before the funds may be released to the seller  
60 from the escrow account.

61 (3) Place one hundred percent of all funds received from  
62 purchasers of such time-sharing plan, after the ten-day can-  
63 cellation periods have expired, in an escrow account when  
64 interests in real property are being sold, whether by means of  
65 deeds, agreements for deed or other agreements which will  
66 subsequently transfer title to the purchasers. The establishment  
67 of such an escrow account shall be evidenced by an executed  
68 escrow agreement between the escrow agent and the seller, the  
69 provisions of which shall include:

70 (A) That its purpose is to protect all deposits and pay-  
71 ments made by a purchaser toward the purchase price until  
72 the deed is transferred to the purchaser or until the purchaser  
73 and seller enter into a contract for deed or any other agree-  
74 ment which will subsequently transfer title to the purchaser;  
75 and

76 (B) That funds may be disbursed to the seller by the  
77 escrow agent from the escrow account only after title has  
78 been delivered to the purchaser or delivered for recording  
79 to the clerk of the county commission in the county where the  
80 real property underlying the time-sharing plan is located.  
81 However, in the case of a time-share period sold by agreement  
82 for deed, funds only may be disbursed to the seller after a  
83 notice to creditors and, if the property is encumbered by a  
84 mortgage, a nondisturbance instrument has been recorded in  
85 the public records of the county or counties in which the time-  
86 sharing plan is located; or alternatively, after the seller re-  
87 cords a notice to creditors and obtains a release of lien for a  
88 time-share unit, funds may be disbursed pertaining to the time-  
89 share periods within that unit.



90 (4) In lieu of establishing the escrow account described by  
91 subdivision (2), post a surety bond, in the total amount of the  
92 contract, with the clerk of the county commission in the county  
93 where the time-sharing plan accommodations or facilities are  
94 located. Such bond shall be executed by the seller as principal  
95 and by a surety company authorized to do business in this state  
96 as surety. The bond shall be conditioned upon the faithful  
97 compliance of the seller with the provisions of both this section  
98 and the contract between the seller and the purchaser and shall  
99 run to the division for the benefit of any purchaser injured by  
100 the seller's violation of this section or failure to perform pur-  
101 suant to the contract between the seller and the purchaser. The  
102 bond may be reduced periodically in the ratio of the amount of  
103 time used by purchasers in relation to the total time sold to  
104 purchasers.

105 (5) In lieu of either establishing the escrow account de-  
106 scribed by subdivision (2) or posting a surety bond described  
107 by subdivision (4), provide the purchaser with a nondistur-  
108 bance instrument or notice to creditors, as follows:

109 (A) Each purchaser shall be furnished with a copy of a  
110 recorded nondisturbance instrument from every lienholder who  
111 has a recorded lien against the property upon which the  
112 accommodations or facilities to be used by the purchaser are  
113 situated. The nondisturbance instrument shall provide that,  
114 in the event of foreclosure of such lien, the succeeding owner  
115 shall take title to the property subject to the possessory rights  
116 of the purchasers;

117 (B) Each purchaser shall also be furnished with a copy of  
118 a recorded instrument which provides to all subsequent credit-  
119 ors of the seller notice of the existence of the time-sharing  
120 plan and notice of the rights of purchasers in the time-sharing  
121 plan from any claims by subsequent creditors;

122 (C) However, if the seller owns the real property and any  
123 accommodations or facilities constituting the time-sharing  
124 plan, free and clear of any mortgage, lien or other encum-  
125 brance, the seller need only furnish to each purchaser a notice  
126 to creditors; and

127 (D) A copy of any recorded nondisturbance instrument or

128 notice to creditors shall be provided to each purchaser by the  
129 seller at the time the contract between them is executed, unless  
130 the seller has initially utilized the escrow provisions of sub-  
131 section (b), in which case the nondisturbance instrument or  
132 notice to creditors shall be provided to the purchaser before  
133 the seller obtains funds from the escrow agent, as provided in  
134 subdivision (2).

135 (6) Place any fund escrowed pursuant to this section into  
136 an escrow account established solely for that purpose with an  
137 attorney who is a member of the state bar; a bank having trust  
138 powers and located in this state; a savings and loan company  
139 located in this state; a trust company located in this state; or a  
140 real estate broker registered under chapter forty-seven of this  
141 code. In lieu of the foregoing, with the approval of the divi-  
142 sion, the funds may be escrowed in an account required by  
143 the jurisdiction in which the sale of the time-sharing plan took  
144 place. In lieu of any escrows required by this section, the di-  
145 rector of the division shall have the discretion to accept other  
146 assurances, including, but not limited to, a surety bond or an  
147 irrevocable letter of credit in an amount equal to the escrow  
148 requirements of this section. Determination of default and re-  
149 fund of deposits shall be governed by the escrow release pro-  
150 vision of this subsection.

151 (b) An escrow agent holding funds escrowed pursuant to  
152 this section may invest such escrowed funds in securities of  
153 the United States government, or any agency thereof, or in  
154 savings or time deposits in institutions insured by an agency  
155 of the United States government. The right to receive the  
156 interest generated by any such investments shall be as speci-  
157 fied by contract.

158 (c) Each escrow agent shall maintain separate books and  
159 records for each time-sharing plan and shall maintain such  
160 books and records in accordance with good accounting prac-  
161 tices.

162 (d) Any seller who intentionally fails to pay all required  
163 funds into the escrow accounts required by this section is  
164 guilty of a felony, and, upon conviction thereof, shall be con-  
165 fined in the penitentiary not less than one nor more than five  
166 years.

**§36-9-8. Reservation agreements; escrows.**

1 (a) (1) Prior to filing the public offering statement with  
2 the division a seller shall not offer a time-sharing plan for  
3 sale but may accept reservation deposits upon approval by  
4 the division of a fully executed escrow agreement and reser-  
5 vation agreement properly filed with the division.

6 (2) Reservations shall not be taken on a time-sharing  
7 plan unless the seller has an ownership interest or leasehold  
8 interest of a duration at least equal to the duration of the  
9 proposed time-sharing equal to the duration of the proposed  
10 time-sharing plan in the land upon which the time-sharing  
11 plan is to be developed.

12 (b) Each executed reservation agreement shall be signed  
13 by the seller and the escrow agent and shall contain the  
14 following:

15 (1) A statement that the escrow agent will grant a pros-  
16 pective purchaser an immediate, unqualified refund of the  
17 reservation deposit upon either the purchaser's or the seller's  
18 written request directed to the escrow agent;

19 (2) A statement that the escrow agent may not otherwise  
20 release moneys unless a contract is signed by the purchaser,  
21 authorizing the release of the escrowed reservation deposit  
22 as a deposit on the purchase price. Such deposit shall then  
23 be subject to the requirements of section seven of this article,  
24 relating to escrow accounts, surety bonds and nondisturbance  
25 instruments;

26 (3) A statement of the obligation of the developer to file  
27 a public offering statement with the division prior to entering  
28 into binding contracts;

29 (4) A statement of the rights of the purchaser to receive  
30 the public offering statement required by this chapter;

31 (5) The name and address of the escrow agent and a  
32 statement that the purchaser may obtain a receipt from the  
33 escrow agent upon request; and

34 (6) A statement that the seller assures that the purchase  
35 price represented in or pursuant to the reservation agree-

36 ment will be the price in the contract for the purchase or  
37 that the price represented may be exceeded within a stated  
38 amount or percentage or a statement that no assurance is  
39 given as to the price in the contract for purchase.

40 (c) (1) The total amount paid for a reservation shall be  
41 deposited into a reservation escrow account.

42 (2) All funds paid in connection with the reservation of  
43 a time-share shall be placed in an escrow account estab-  
44 lished solely for that purpose with an attorney who is a  
45 member of the state bar; a bank having trust powers and located  
46 in this state; a savings and loan company located in this  
47 state; a trust company located in this state; or a real estate  
48 broker registered under chapter forty-seven of this code.  
49 In lieu of the foregoing, with the approval of the division,  
50 the funds may be deposited into an escrow account required  
51 by the jurisdiction in which the sale took place.

52 (3) The escrow agent may invest the escrowed funds in  
53 securities of the United States government, or any agency  
54 thereof, or in savings or time deposits in institutions insured  
55 by an agency of the United States government. The right  
56 to receive the interest generated from any such investments  
57 shall be as specified by the reservation agreement.

58 (4) The escrowed funds shall at all reasonable times be  
59 available for withdrawal in full by the escrow agent.

60 (5) Each escrow agent shall maintain separate books and  
61 records for each time-sharing plan and shall maintain such  
62 books and records in accordance with good accounting prac-  
63 tices.

64 (d) Any seller who intentionally fails to pay all required  
65 funds into the escrow account required by this section is  
66 guilty of a felony, and, upon conviction thereof, shall be  
67 confined in the penitentiary not less than one nor more than  
68 five years.

### §36-9-9. Cancellation.

1 No seller shall:

2 (a) Fail to honor the request of a purchaser to cancel a

3 contract made between the seller and purchaser pertaining to  
4 the sale of a time-sharing plan if the request is made as  
5 provided in the contract;

6 (b) Misrepresent in any manner the purchaser's right to  
7 cancel;

8 (c) Fail to refund all payments made by the purchaser  
9 under the contract and return all negotiable instruments,  
10 other than checks, executed by the purchaser in connection  
11 with the contract within twenty days from receipt of the  
12 notice of cancellation transmitted to the seller from the  
13 purchaser, if the purchaser has received no benefits under the  
14 contract; and

15 (d) Fail to refund all payments made by the purchaser  
16 under the contract which exceed a pro rata portion of the  
17 total price representing the proportion of any contract bene-  
18 fits actually received by the purchaser during the time pre-  
19 ceding the date when cancellation becomes effective, within  
20 twenty days from receipt of the purchaser's notice of can-  
21 cellation, if the purchaser has received benefits under the  
22 time-sharing plan.

**§36-9-10. Advertising materials.**

1 (a) All advertising materials shall be filed with the division  
2 within ten days of use. "Advertising materials" include:

3 (1) Promotional brochures, pamphlets, advertisements or  
4 other materials to be disseminated to the public in connection  
5 with the sale of time shares;

6 (2) Transcripts of radio and television advertisements;

7 (3) Lodging certificates;

8 (4) Transcripts of standard verbal sales presentations; and

9 (5) Any other advertising materials.

10 (b) No advertising shall:

11 (1) Misrepresent a fact or create a false or misleading im-  
12 pression regarding the time-sharing plan;

13 (2) Make a prediction of specific or immediate increases  
14 in the price or value of time-share periods;

15 (3) Contain a statement concerning future price increases  
16 by the seller which are nonspecific or not bona fide;

17 (4) Contain any asterisk or other reference symbol as a  
18 means of contradicting or substantially changing any previous-  
19 ly made statement or as a means of obscuring a material fact;

20 (5) Describe any improvements to the time-sharing plan  
21 that is not required to be built or that is uncompleted unless  
22 the improvement is conspicuously labeled as "NEED NOT  
23 BE BUILT," "PROPOSED" or "UNDER CONSTRU-  
24 TION" with the date or promised completion clearly indicated;

25 (6) Misrepresent the size, nature, extent, qualities or char-  
26 acteristics of the offered accommodations or facilities;

27 (7) Misrepresent the amount or period of time during  
28 which the accommodations or facilities will be available to  
29 any purchaser;

30 (8) Misrepresent the nature or extent of any services in-  
31 cident to the time-sharing plan;

32 (9) Make any misleading or deceptive representation with  
33 respect to the contents of the public offering statement and  
34 the contract or the purchasers' rights, privileges, benefits or  
35 obligations under the contract or this chapter; and

36 (10) Misrepresent the conditions under which a purchaser  
37 may exchange the right to use accommodations or facilities  
38 in one location for the right to use accommodations or facili-  
39 ties in another location.

40 (c) No promotional device, including any sweepstakes,  
41 lodging certificate, gift award, premium, discount, drawing or  
42 display booth, may be utilized without a disclosure that:

43 (1) The promotional device is being used for the purpose  
44 of soliciting sales of time-share periods; and

45 (2) The promotional device is being used to obtain the  
46 names and addresses of prospective purchasers and that any  
47 names and addresses acquired may be used for the purpose of  
48 soliciting sales of time-share periods.

49 (d) When a time-share project uses free offers, gift enter-  
50 prises, drawings, sweepstakes or discounts as a promotional  
51 program, the rules of such promotional program shall be  
52 disclosed to the public and shall state:

53 (1) The name of each time-sharing plan or business entity  
54 participating in the program;

55 (2) The day and year by which all prizes listed or offered  
56 will be awarded; and

57 (3) The method by which all prizes are to be awarded.

58 (e) At least one of each prize featured in a promotional  
59 program shall be awarded by the day and year specified in the  
60 promotion. When a promotion promises the award of a certain  
61 number of each prize, such number of prizes shall be awarded  
62 by the date and year specified in the promotion. A record shall  
63 be maintained containing the names and addresses of winners  
64 of the prizes and the record shall be made available upon re-  
65 quest, to the public, upon payment of reasonable reproduction  
66 costs.

67 (f) The division shall require full disclosure of all perti-  
68 nent information concerning the use of lodging certificates in  
69 a promotional campaign, including the terms and conditions  
70 of the campaign and the fact and extent of participation in  
71 such campaign by the developer. The division further may re-  
72 quire reasonable assurances that the obligation incurred by a  
73 seller or the seller's agent in a lodging certificate program can  
74 be met. Such programs are subject to the prior approval of the  
75 division.

76 (g) If at any time the division determines that any adver-  
77 tising fails to meet the requirements of this section, the divi-  
78 sion may undertake enforcement action under the provisions  
79 of section twenty-three of this article.

### §36-9-11. Recordkeeping by seller.

1 Each seller of a time-sharing plan shall maintain among  
2 its business records the following:

3 (a) A copy of each contract for the sale of a time-share  
4 period, which contract has not been canceled. If fee title

5 is being conveyed, the seller is required to retain a copy  
6 of the contract only until a deed of conveyance is recorded  
7 in the office of the clerk of the county commission in the  
8 county wherein the plan is located; and

9 (b) A list of all salespersons of the seller and their last  
10 known addresses. The names and addresses of such sales-  
11 persons whose employments terminate shall be retained for  
12 three years after termination of employment. If the seller  
13 has a contract with any entity not owned or controlled by  
14 the seller for the sale of the time-sharing plan, that entity  
15 shall be responsible for maintaining a record of current em-  
16 ployees involved in the sale of the time-sharing plan and a  
17 record of any former employees involved in the sale of such  
18 plan within the previous three years.

#### §36-9-12. Management.

1 (a) Before the first sale of a time-share period, the de-  
2 veloper shall create or provide for a managing entity, which  
3 may be the developer, a separate management firm or an  
4 owners' association, or some combination thereof.

5 (b) The managing entity shall act in the capacity of a  
6 fiduciary to the purchasers of the time-sharing plan.

7 (c) The duties of the managing entity shall include, but  
8 are not limited to:

9 (1) Management and maintenance of all accommodations  
10 and facilities constituting the time-sharing plan;

11 (2) Collection of all assessments for common expenses;

12 (3) Providing each year to all purchasers an itemized  
13 annual budget, which shall include all receipts and expendi-  
14 tures;

15 (4) Maintenance of all books and records concerning the  
16 time-sharing plan on the premises of the accommodations or  
17 facilities of such plan and making all such books and records  
18 reasonably available for inspection by any purchaser or the  
19 authorized agent of such purchaser;

20 (5) Arranging for an annual independent audit to be



21 conducted of all the books and financial records of the  
22 time-sharing plan by a certified public accountant in accord-  
23 ance with the standards of the accounting standards board of  
24 the American institute of certified public accountants. A  
25 copy of the audit shall be forwarded to the officers of the  
26 owners' association; or, if no association exists, the owner of  
27 each time-share period shall be notified that such audit is  
28 available upon request;

29 (6) Making available for inspection by the division any  
30 books and records of the time-sharing plan, upon the request  
31 of the division;

32 (7) Scheduling occupancy of the time-share units, when  
33 purchasers are not entitled to use specific time-share periods,  
34 so that all purchasers will be provided the use and possession  
35 of the accommodations and facilities of the time sharing  
36 plan which they have purchased; and

37 (8) Performing any other functions and duties which are  
38 necessary and proper to maintain the accommodations or  
39 facilities as provided in the contract and as advertised.

40 (d) Any managing entity, or employee or agent thereof,  
41 who willfully misappropriates the property or funds of a  
42 time-sharing plan is guilty of a felony, and, upon conviction  
43 thereof, shall be imprisoned in the penitentiary for not less  
44 than one nor more than five years.

**§36-9-13. Discharge of managing entity.**

1 (a) If a fee simple interest in real property is being  
2 sold to purchasers of a time-sharing plan, the contract re-  
3 taining a managing entity shall be automatically renewable  
4 every three years, beginning with the third year after the  
5 managing entity is first created or provided for the time-  
6 sharing plan, unless the purchasers vote to discharge the  
7 managing entity. Such a vote shall be conducted by the board  
8 of the owners' association. The managing entity shall be dis-  
9 charged if at least sixty-six percent of the purchasers voting,  
10 which shall be at least fifty percent of all votes allocated to  
11 purchasers, vote to discharge the managing entity.

12 (b) In the event the managing entity is discharged, the

13 board of the owners' association shall be responsible for  
14 obtaining another managing entity.

15 (c) The managing entity of a condominium time-sharing  
16 plan may be discharged in the same manner.

**§36-9-14. Assessment of common expenses.**

1 (a) Until a managing entity is created or provided the  
2 developer shall pay all common expenses.

3 (b) After the creation or provision of a managing entity,  
4 the managing entity shall make an annual assessment against  
5 each purchaser for the payment of common expenses, based  
6 on the projected annual budget, in the amount specified by  
7 the contract between the seller and the purchaser. The  
8 seller shall be assessed for the share of common expenses  
9 allocated to all time-share periods still owned by the seller  
10 at the time such assessment is made, unless the seller guaran-  
11 tees all common expenses of the time-share plan pursuant  
12 to the provisions of the contract or until the time control is  
13 turned over to the purchasers.

14 (c) Past-due assessments may bear interest at the legal  
15 rate or at some lesser rate established by the managing entity.

16 (d) Unless otherwise specified in the contract between  
17 the seller and the purchaser, any common expenses benefiting  
18 fewer than all purchasers shall be assessed only against  
19 those purchasers benefited.

20 (e) Any assessments for common expenses which have not  
21 been spent for common expenses during the year for which  
22 such assessments were made shall be shown as an item on  
23 the annual budget.

**§36-9-15. Liens for overdue assessments; mechanic's liens; insurance.**

1 (a) The managing entity has a lien on a time-share period  
2 for any assessment levied against that time-share period from  
3 the date such assessment becomes due.

4 (b) The managing entity may bring an action in its name  
5 to foreclose a lien for assessments, in the manner a mortgage  
6 of real property is foreclosed, and may also bring an action to

7 recover a money judgment for the unpaid assessments without  
8 waiving any claim of lien. However, in the case of a time-  
9 sharing plan in which no interest in real property is conveyed,  
10 the managing entity may bring an action under chapter forty-  
11 six of this code.

12 (c) The lien is effective from the date of recording a claim  
13 of lien in the public records of the county or counties in  
14 which the accommodations or facilities constituting the time-  
15 sharing plan are located. The claim of lien shall state the name  
16 of the time-sharing plan and identify the time-share period  
17 for which the lien is effective, state the name of the purchaser,  
18 state the assessment amount due, and state the due dates. The  
19 lien is effective until satisfied or until barred by law. The  
20 claim of lien may include only assessments which are due  
21 when the claim is recorded. A claim of lien shall be signed and  
22 acknowledged by an officer or agent of the managing entity.  
23 Upon full payment, the person making the payment is entitled  
24 to a satisfaction of the lien.

25 (d) A judgment in any action or suit brought under this  
26 section shall include costs and reasonable attorney's fees for  
27 the prevailing party.

28 (e) Labor performed on a unit, or materials furnished to  
29 a unit, shall not be the basis for the filing of a lien pursuant to  
30 the mechanic's line law against the time-share unit of any  
31 time-share period owner not expressly consenting to or re-  
32 questing the labor or materials.

33 (f) The seller, initially, and thereafter the managing entity,  
34 shall be responsible for obtaining insurance to protect the  
35 accommodations and facilities of the time-sharing plan in an  
36 amount equal to the replacement cost of such accommodations  
37 and facilities.

38 A copy of each policy of insurance in effect shall be made  
39 available for reasonable inspection by purchasers and their  
40 authorized agents.

**§36-9-16. Transfer of seller's interest to third party.**

1 No seller shall sell, lease, assign, mortgage or otherwise

2 transfer the seller's interest in the accommodations or facilities  
3 of a time-sharing plan to a third party, unless:

4 (a) The third party agrees in writing to honor fully the  
5 rights of purchasers of the time-sharing plan to occupy and  
6 use the accommodations or facilities;

7 (b) The third party agrees in writing to honor fully the  
8 rights of purchasers of the time-sharing plan to cancel their  
9 contracts and receive appropriate refunds, as provided in  
10 this article;

11 (c) The third party agrees in writing to comply with the  
12 provisions of this article for as long as the third party con-  
13 tinues to sell the time-sharing plan or for as long as purchasers  
14 of the time-sharing plan are entitled to occupy the accommo-  
15 dations or use the facilities, whichever is longer in time;

16 (d) The third party agrees to assume all obligations of  
17 the seller to purchasers; and

18 (e) Notice is mailed to each purchaser of the time-sharing  
19 plan affected thereby within thirty days of the sale, lease, as-  
20 signment or other transfer.

21 Persons who hold mortgages on the property constituting  
22 a time-sharing plan before the public offering statement of such  
23 plan is approved by the division shall not be considered third  
24 parties for the purposes of this section.

### **§36-9-17. Exchange programs.**

1 (a) If a purchaser is offered the opportunity to subscribe  
2 to any program that provides exchanges of time-share periods  
3 among purchasers in either the same time-sharing plan or  
4 other time-sharing plans, or both, the seller shall deliver to  
5 the purchaser, together with the public offering statement,  
6 and prior to the execution of any contract between the pur-  
7 chaser and the company offering the exchange program, writ-  
8 ten information regarding such exchange program and the  
9 purchaser shall certify in writing to the receipt of such writ-  
10 ten information, which information shall include, but is not  
11 limited to, the following:

12 (1) The name and address of the exchange company;

13 (2) The names of all officers, directors and shareholders  
14 of the exchange company;

15 (3) Whether the exchange company or any of its officers  
16 or directors has any legal or beneficial interest in any devel-  
17 oper, seller or managing entity for any time-sharing plan par-  
18 ticipating in the exchange program and, if so, the name and  
19 location of the time-sharing plan and the nature of the in-  
20 terest;

21 (4) Unless otherwise stated, a statement that the pur-  
22 chaser's contract with the exchange company is a contract  
23 separate and distinct from the purchaser's contract with the  
24 seller of the time-sharing plan;

25 (5) Whether the purchaser's participation in the exchange  
26 program is dependent upon the continued affiliation of the  
27 time-sharing plan with the exchange program;

28 (6) A statement that the purchaser's participation in the  
29 exchange program is voluntary;

30 (7) A complete and accurate description of the terms and  
31 conditions of the purchaser's contractual relationship with  
32 the exchange program and the procedure by which changes  
33 thereto may be made;

34 (8) A complete and accurate description of the procedure  
35 to qualify for and effectuate exchanges;

36 (9) A complete and accurate description of all limitations,  
37 restrictions or priorities employed in the operation of the  
38 exchange program, including, but not limited to, limitations  
39 on exchanges based on seasonality, unit size or levels of oc-  
40 cupancy, expressed in boldfaced type, and, in the event that  
41 such limitations, restrictions or priorities are not uniformly  
42 applied by the exchange program, a clear description of the  
43 manner in which they are applied;

44 (10) Whether exchanges are arranged on a space-available  
45 basis and whether any guarantees of fulfillment of specific  
46 requests for exchanges are made by the exchange program;

47 (11) Whether and under what circumstances a purchaser,  
48 in dealing with the exchange program, may lose the use and

49 occupancy of his time-share period in any properly applied  
50 for exchange without his being provided with substitute ac-  
51 commodations by the exchange program;

52 (12) The fees or range of fees for participation by pur-  
53 chasers in the exchange program, a statement whether any such  
54 fees may be altered by the exchange company and the circum-  
55 stances under which alterations may be made;

56 (13) The name and address of the site of each accommo-  
57 dation or facility included in the time-sharing plan partici-  
58 pating in the exchange program;

59 (14) The number of the time-share units in each time-shar-  
60 ing plan which are available for occupancy and which qualify  
61 for participation in the exchange program expressed within the  
62 following numerical groupings: 1-5; 6-10; 11-20; 21-50 and  
63 51 and over;

64 (15) The number of currently enrolled purchasers for each  
65 time-sharing plan participating in the exchange program, ex-  
66 pressed within the following numerical groupings: 1-100; 101-  
67 249; 250-499; 500-999 and 1,000 and over; and a statement  
68 of the criteria used to determine those purchasers who are  
69 currently enrolled with the exchange program;

70 (16) The disposition made by the exchange company of the  
71 time-share periods deposited with the exchange program by  
72 purchasers enrolled in the exchange program and not used by  
73 the exchange company in effecting exchanges;

74 (17) The following information, which shall be independ-  
75 ently audited by a certified public accountant or accounting  
76 firm in accordance with the standards of the accounting stan-  
77 dards board of the American institute of certified public ac-  
78 countants and reported on an annual basis beginning no later  
79 than the first day of July, one thousand nine hundred eighty-  
80 four:

81 (A) The number of purchasers currently enrolled in the ex-  
82 change program;

83 (B) The number of accommodations and facilities that  
84 have current affiliation agreements with the exchange program;

85 (C) The percentage of confirmed exchanges, which shall be  
86 the number of exchanges confirmed by the exchange program  
87 divided by the number of exchanges properly applied for, to-  
88 gether with a complete and accurate statement of the criteria  
89 used to determine whether an exchange request was properly  
90 applied for;

91 (D) The number of time-share periods for which the ex-  
92 change program has an outstanding obligation to provide an  
93 exchange to a purchaser who relinquished a time-share period  
94 during the year in exchange for a time-share period in any  
95 future year; and

96 (E) The number of exchanges confirmed by the exchange  
97 program during the year.

98 (18) A statement in boldfaced type to the effect that the  
99 percentage described in subparagraph (C), subdivision (17) of  
100 this subsection is a summary of the exchange requests entered  
101 with the exchange program in the period reported and that the  
102 percentage does not indicate a purchaser's probabilities of be-  
103 ing confirmed to any specific choice or range of choices.

104 (b) Each exchange company offering an exchange program  
105 to purchasers in this state shall file the information specified  
106 in subsection (a) with the division annually. If at any time  
107 the division determines that any of such information supplied  
108 by an exchange company fails to meet the requirements of  
109 this section, the division may undertake enforcement action  
110 against the exchange company in accordance with the pro-  
111 vision of section twenty-three of this article. No developer shall  
112 have any liability with respect to any violation of this chapter  
113 arising out of the publication by the developer of information  
114 provided to it by an exchange company pursuant to this sec-  
115 tion. No exchange company shall have any liability with re-  
116 spect to any violation of this chapter arising out of the use  
117 by a developer of information relating to an exchange program  
118 other than that provided to the developer by the exchange  
119 company.

120 (c) Only a person who has purchased a time-share period in  
121 a time-share unit may participate in an exchange program.

122 (d) The failure of an exchange company to observe the re-  
123 quirements of this section, or the use of any unfair or de-  
124 ceptive act or practice in connection with the operation of an  
125 exchange program, is a violation of this article.

**§36-9-18. License required to sell.**

1 Any seller of a time-sharing plan shall be a licensed real  
2 estate salesman, broker or broker-salesman, pursuant to  
3 chapter forty-seven of the code or its successor, and shall be  
4 subject to all of the provisions of that article. This section  
5 shall not apply to those individuals who are exempt from  
6 chapter forty-seven of the code or to those time-sharing  
7 plans which are registered with the securities and exchange  
8 commission.

**§36-9-19. Purchaser's remedies.**

1 An action for damages or injunctive or declaratory relief  
2 for a violation of this article may be brought by any purchaser  
3 or association of purchasers against the developer, a seller  
4 or the managing entity. The prevailing party in any such  
5 action may be entitled to reasonable attorney's fees. Relief  
6 under this section does not exclude any other remedies pro-  
7 vided by law.

**§36-9-20. Partition.**

1 No action for partition of any time-share unit shall lie,  
2 unless otherwise provided for in the contract between the  
3 seller and the purchaser.

**§36-9-21. Securities.**

1 Time-sharing plans are not securities under the provisions  
2 of this code.

**§36-9-22. Zoning and building.**

1 All laws, ordinances and regulations concerning buildings  
2 or zoning shall be construed and applied with reference to the  
3 nature and use of the real estate time-sharing plan property,  
4 without regard to the form of ownership.

**§36-9-23. Regulation by division.**

1 The division of land sales and condominiums is hereby



2 created in the office of the state auditor to administer the  
3 provisions of this article. The division has the power and  
4 authority to enforce and ensure compliance with the provisions  
5 of this article. In performing its duties, the division shall  
6 have the following powers and duties:

7 (a) To aid in the enforcement of this chapter, the division  
8 may make necessary public or private investigations within  
9 or outside this state to determine whether any person has  
10 violated or is about to violate this article;

11 (b) The division may require or permit any person to  
12 file a written statement under oath or otherwise, as the  
13 division determines, as to the facts and circumstances con-  
14 cerning a matter under investigation;

15 (c) For the purpose of any investigation under this chap-  
16 ter, the director of the division or any officer or employee  
17 designated by the director may administer oaths or affirma-  
18 tions, subpoena witnesses and compel their attendance, take  
19 evidence, and require the production of any matter which  
20 is relevant to the investigation, including the identity, exist-  
21 ence, description, nature, custody, condition and location  
22 of any books, documents or other tangible things and the  
23 identity and location of persons having knowledge of rele-  
24 vant facts or any other matter reasonably calculated to lead  
25 to the discovery of material evidence. Upon failure to obey  
26 a subpoena or to answer questions propounded by the in-  
27 vestigating officer and upon reasonable notice to all persons  
28 affected thereby, the division may apply to the circuit court for  
29 an order compelling compliance;

30 (d) The division may prepare and disseminate a pros-  
31 pectus and other information to assist prospective purchasers,  
32 sellers and managing entities of time-sharing plans in assessing  
33 the rights, privileges and duties pertaining thereto; and

34 (e) Notwithstanding any remedies available to purchasers,  
35 if the division has reasonable cause to believe that a viola-  
36 tion of this chapter has occurred, the division may institute  
37 enforcement proceedings in its own name against any de-  
38 veloper, exchange program, seller, managing entity, associa-  
39 tion or other person as follows:

40 (1) The division may permit any person whose conduct  
41 or actions may be under investigation to waive formal  
42 proceedings and enter into a consent proceeding whereby an  
43 order, rule or letter of censure or warning, whether formal  
44 or informal, may be entered against that person;

45 (2) The division may issue an order requiring a developer,  
46 exchange program, seller, managing entity, association or  
47 other person, or other assignees or agents, to cease and desist  
48 from an unlawful practice under this article and take such  
49 affirmative action as in the judgment of the division will carry  
50 out the purposes of this article;

51 (3) The division may bring an action in circuit court for  
52 declaratory or injunctive relief;

53 (4) (A) The division may impose a civil penalty against  
54 any developer, exchange program, seller, managing entity,  
55 association or other person for a violation of this chapter.  
56 A penalty may be imposed on the basis of each day of con-  
57 tinuing violation, but in no event shall the penalty for any  
58 offense exceed ten thousand dollars. All accounts collected  
59 shall be deposited with the treasurer to the credit of the  
60 West Virginia real estate time-sharing trust fund;

61 (B) If a developer, exchange program, seller or other  
62 person fails to pay the civil penalty, the division shall there-  
63 upon issue an order directing that such developer, exchange  
64 program, seller or other person cease and desist from further  
65 operation until such time as the civil penalty is paid; or the  
66 division may pursue enforcement of the penalty in a court of  
67 competent jurisdiction. If an association or managing entity  
68 fails to pay the civil penalty, the division shall thereupon  
69 pursue enforcement in a court of competent jurisdiction;

70 (5) In order to permit the developer, exchange program,  
71 seller, managing entity, association or other person an op-  
72 portunity either to appeal such decision administratively or  
73 to seek relief in a court of competent jurisdiction, the order  
74 imposing the civil penalty or the cease and desist order shall  
75 not become effective until twenty days after the date of  
76 such order; and

77 (6) Any action commenced by the division shall be brought  
78 in the county in which the violation occurred.

**§36-9-24. Annual fee for each time-share period in plan.**

1 On or before the first day of July of each year, each man-  
2 aging entity shall collect as a common expense and pay to the  
3 division an annual fee of fifty cents for each time-share period  
4 within the time-sharing plan.

**§36-9-25. West Virginia real estate time-sharing trust fund.**

1 There is created within the state treasury the West Virginia  
2 real estate time-sharing trust fund to be used for the adminis-  
3 tration and operation of this article by the division. All funds  
4 collected by the division and any amounts paid as fees or pen-  
5 alties under this article shall be deposited in the state treasury  
6 to the credit of the trust fund created by this section.

**§36-9-26. Taxation.**

1 For purposes of local real property taxation, each time-  
2 share unit, other than a unit operated for time-share use, shall  
3 be valued in the same manner as if such unit were owned  
4 by a single taxpayer. The total cumulative purchase price  
5 paid by the time-share owners for a unit shall not be utilized  
6 by the local assessing officers as a factor in determining the  
7 assessed value of such unit. A unit operated as a time-share  
8 use, however, may be assessed the same as other income-  
9 producing and investment property. Tax records in a time-  
10 share unit shall be in the name of the association or the  
11 managing agent.

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## CHAPTER 160

(S. B. 214—By Senator Davis)

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[ Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor ]

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AN ACT to amend sections twenty, twenty-four and thirty-  
one, article nine, chapter forty-seven of the code of West  
Virginia, one thousand nine hundred thirty-one, as amend-

ed, relating to uniform limited partnership act generally; specifying method of withdrawal for person who erroneously believes himself a limited partner; and relating to liabilities of general partner.

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

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

**ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.**

§47-9-20. Person erroneously believing himself limited partner.

§47-9-24. General powers and liabilities of general partner.

§47-9-31. Interim distributions.

**§47-9-20. Person erroneously believing himself limited partner.**

1 (a) Except as provided in subsection (b) of this section,  
2 a person who makes a contribution to a business enter-  
3 prise and erroneously but in good faith believes that  
4 he has become a limited partner in the enterprise is not a  
5 general partner in the enterprise and is not bound by its  
6 obligations by reason of making the contribution, receiv-  
7 ing distributions from the enterprise or exercising any  
8 rights of a limited partner, if, on ascertaining the mistake,  
9 he:

10 (1) Causes an appropriate certificate of limited part-  
11 nership or a certificate of amendment to be executed and  
12 filed; or

13 (2) Withdraws from future equity participation in the  
14 enterprise by executing and filing in the office of the  
15 secretary of state a certificate declaring withdrawal under  
16 this section.

17 (b) A person who makes a contribution of the kind  
18 described in subsection (a) of this section, is liable as a  
19 general partner to any third party who transacts business  
20 with the enterprise (i) before the person withdraws and

21 an appropriate certificate is filed to show withdrawal, or  
22 (ii) before an appropriate certificate is filed to show his  
23 status as a limited partner and, in the case of an amend-  
24 ment, after expiration of the thirty-day period for filing  
25 an amendment relating to the person as a limited partner  
26 under section nine of this article, but in either case only  
27 if the third party actually believed in good faith that the  
28 person was a general partner at the time of the trans-  
29 action.

**§47-9-24. General powers and liabilities of general partner.**

1 (a) Except as provided in this article or in the partner-  
2 ship agreement, a general partner of a limited partnership  
3 has the rights and powers and is subject to the restrictions  
4 of a partner in a partnership without limited partners.

5 (b) Except as provided in this article, a general part-  
6 ner of a limited partnership has the liabilities of a partner  
7 in a partnership without limited partners to persons  
8 other than the partnership and the other partners. Except  
9 as provided in this article or in the partnership agree-  
10 ment, a general partner of a limited partnership has the  
11 liabilities of a partner in a partnership without limited  
12 partners to the partnership and to other partners.

**§47-9-31. Interim distributions.**

1 Except as provided in this article, a partner is entitled  
2 to receive distributions from a limited partnership before  
3 his withdrawal from the limited partnership and before  
4 the dissolution and winding up thereof:

5 (1) To the extent and at the times or upon the happen-  
6 ing of the events specified in the partnership agreement;  
7 and

8 (2) If any distribution constitutes a return of part of  
9 his contribution under subsection (c), section thirty-eight  
10 of this article, to the extent and at the times or upon the  
11 happening of the events specified in the certificate of  
12 limited partnership.

## CHAPTER 161

(Com. Sub. for H. B. 1910—By Delegate Doyle and Delegate Roop)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, article twenty-three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to conferring authority upon county planning commissions to make initial determinations on the licensing of salvage yards by granting or denying approval permit; requiring salvage yard owners or operators to first comply and meet county standards set by county planning commissions; issuance of approval permits; application for license to the commissioner of the department of highways; fee; issuance; renewal; disposition of fee.

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

That sections three and four, article twenty-three, 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 23. SALVAGE YARDS.

§17-23-3. License required; issuance; fee; renewal; disposition of fees.

§17-23-4. Areas where establishment prohibited; screening requirements; existing licensed yards; approval permit required; issuance; county planning commission criteria satisfied; fee.

**§17-23-3. License required; issuance; fee; renewal; disposition of fees.**

1 No salvage yard or any part thereof shall be established,  
 2 operated or maintained without a state license. The com-  
 3 missioner shall have the sole authority to issue such a state  
 4 license, and he shall charge therefor a fee of fifty dollars  
 5 payable annually in advance. All licenses issued under this  
 6 section shall expire on the first day of January following the  
 7 date of issuance. A license may be renewed from year to year  
 8 upon paying the commissioner the sum of fifty dollars for  
 9 each such renewal. All such renewal license fees collected  
 10 under the provisions of this article shall be deposited in the  
 11 special fund provided for in section ten of this article.

**§17-23-4. Areas where establishment prohibited; screening requirements; existing licensed yards; approval permit required; issuance; county planning commission criteria satisfied; fee.**

1 On and after the effective date of this article, (1) no  
2 license shall be issued to establish a salvage yard or any  
3 part thereof within one thousand feet of the nearest edge  
4 of the right-of-way of any road within the state road system  
5 designated and classified or redesignated and reclassified as  
6 expressway, trunkline, or feeder, or any road within the  
7 state road system designated and classified or redesignated and  
8 reclassified for purposes of allocation of federal highway funds  
9 as part of the federal-aid interstate or primary systems:  
10 *Provided*, That this limitation shall not apply to landfills  
11 established and maintained by any county or municipality if  
12 such landfill is effectively screened and obscured by natural  
13 objects, plantings, fences or other appropriate means so as  
14 not to be visible from the main traveled way of the system,  
15 and (2) no license shall be issued to establish a salvage yard  
16 or any part thereof within three hundred feet of the nearest  
17 edge of the right-of-way of any state local service road, unless  
18 the view thereof from such state local service road shall be  
19 effectively screened and obscured by fences: *Provided, how-*  
20 *ever*, That this limitation shall not apply to landfills established  
21 and maintained by any county or municipality if such landfill is  
22 effectively screened and obscured by natural objects, plant-  
23 ings, fences or other appropriate means so as not to be visible  
24 from the main traveled way of the system.

25 The license of any salvage yard duly issued under the  
26 former provisions of this article, which salvage yard or any  
27 part thereof on the effective date of this article, is (1)  
28 within one thousand feet of the nearest edge of the right-  
29 of-way of any road within the state road system designated  
30 and classified or redesignated and reclassified as expressway,  
31 trunkline, or feeder, or any road within the state road system  
32 designated and classified or redesignated and reclassified for  
33 purposes of allocation of federal highway funds as part of the  
34 federal-aid interstate or primary systems or is (2) within three  
35 hundred feet of the nearest edge of the right-of-way of any

36 state local service road, may be renewed only if the view of the  
37 said salvage yard and all parts thereof are effectively screened  
38 from the adjacent road by natural objects, plantings, fences  
39 or other appropriate means.

40 Any salvage yard which, on the effective date of this  
41 article, is duly licensed under the former provisions of this  
42 article may be established or continue to be operated and  
43 maintained without screening by natural objects, plantings,  
44 fences or other appropriate means so long as any part of  
45 such salvage yard is (1) not located within one thousand feet  
46 of any road within the state road system designated and  
47 classified or redesignated and reclassified as expressway, trunk-  
48 line or feeder, or any road within the state road system  
49 designated and classified or redesignated and reclassified for  
50 the purposes of allocation of federal highway funds as part of  
51 the federal-aid interstate or primary systems or is (2) not  
52 located within three hundred feet of the nearest edge of the  
53 right-of-way of any state local service road.

54 On or after the first day of July, one thousand nine  
55 hundred eighty-four, any owner or operator establishing,  
56 operating or maintaining a salvage yard for which a license is  
57 required under the provisions of this article is hereby re-  
58 quired to first obtain an approval permit from the county plan-  
59 ning commission, or if the county does not have a county  
60 planning commission, from an appropriate office or agency  
61 designated by the county commission, in which the salvage  
62 yard is located. The county planning commission or designated  
63 agency or office shall promulgate such reasonable rules and  
64 regulations including, but not limited to, determining the  
65 effect of the proposed salvage yard on residential, business  
66 or commercial property investment and values, and the social,  
67 economic and environmental impact on community growth  
68 and development in utilities, health, education, recreation,  
69 safety, welfare and convenience, if any, before issuing such  
70 approval permit. The fee for the approval permit shall be  
71 twenty-five dollars, payable upon the filing of the application  
72 on forms to be designated and approved by the county  
73 planning commission or designated office or agency.



74 Upon the granting of an approval permit by the county  
75 planning commission, the owner or operator shall then apply  
76 to the commissioner for a license to operate. The com-  
77 missioner may issue a license to the applicant, but only after  
78 an approval permit has issued in the first instance and the  
79 location of the salvage yard is in compliance with the location  
80 requirements of section four of this article. The approval  
81 permit requirement of this section does not apply to any  
82 owner or operator who has established, or is operating or  
83 maintaining, a salvage yard prior to the first day of July,  
84 one thousand nine hundred eighty-four.

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## CHAPTER 162

(Com. Sub. for S. B. 155—By Senator Tucker)

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[Passed March 9, 1984; in effect ninety days from passage. Approved by the Governor]

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AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-a, relating to skin and scuba diving; permitting such diving in all waters within the state, including natural and artificial lakes, except in certain designated areas; requiring display of the international code flag "A" as a "diver down" flag at all times when a diver is in the water; providing "diver down" flag specifications; requiring a diver to surface within one hundred feet of a "diver down" flag; and specifying criminal penalties.

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

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

**ARTICLE 4A. SKIN AND SCUBA DIVING.**

§20-4A-1. Waters where diving is permitted; exceptions.

§20-4A-2. "Diver down" flag required; flag specifications.

§20-4A-3. Penalties.

**§20-4A-1. Waters where diving is permitted; exceptions.**

1 (a) Skin and scuba (self-contained underwater  
2 breathing apparatus) diving is permitted in all waters in  
3 this state, including natural and artificial lakes, except in  
4 the following areas:

5 (1) Within one hundred feet of boat ramps, controlled  
6 swimming areas, marina areas and fishing piers marked for  
7 use by physically disabled persons;

8 (2) Designated hazards areas;

9 (3) Areas near dams and outlet structures in artificial  
10 lakes;

11 (4) Heavily traveled boat lanes;

12 (5) Narrow channels; and

13 (6) Areas where visibility is obscured.

14 (b) The provisions of this section shall not apply to  
15 professional skin or scuba divers engaged in demolition,  
16 salvage, construction, rescue or repair work in the regular  
17 course of their business.

**§20-4A-2. "Diver down" flag required; flag specifications.**

1 (1) No person may skin or scuba dive in any waters of  
2 the state that are used by motorboats unless the diving area  
3 is marked by one "diver down" flag displayed at all times  
4 while a diver is in the water.

5 (2) The "diver down" flag shall be a red field with a  
6 white diagonal stripe not less than one and one-half inches  
7 wide running upper left to lower right. The dimensions of  
8 the flag shall be not less than ten inches by ten inches and  
9 the top of the flag shall be at least three feet above the  
10 surface of the water.

11 (3) The "diver down" flag shall be anchored and affixed  
12 to a separate flotation device. No such flag may be attached

13 to any navigational device or placed so as to obstruct boat  
14 traffic.

15 (4) A diver must surface within one hundred feet of the  
16 "diver down" flag marking his diving area.

### §20-4A-3. Penalties.

1 Any person violating any of the provisions of this article  
2 is guilty of a misdemeanor, and, upon conviction thereof,  
3 shall be fined not less than twenty nor more than three  
4 hundred dollars, or confined in jail not less than ten nor  
5 more than one hundred days, or both fined and imprisoned.

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## CHAPTER 163

(Com. Sub. for H. B. 1452—By Delegate Harman and Delegate J. Martin)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-a, relating to ski areas generally; the operation of such areas and of aerial tramways in connection therewith; providing definitions of certain terms with respect thereto; the relative duties of operators, aerial tramway passengers and skiers; and setting forth the liabilities of such operators, passengers and skiers.

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

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

### ARTICLE 3A. SKIING RESPONSIBILITY ACT.

- §20-3A-1. Legislative purpose.
- §20-3A-2. Definitions.
- §20-3A-3. Duties of ski area operators with respect to ski areas.
- §20-3A-4. Responsibilities of passengers.
- §20-3A-5. Duties of skiers.
- §20-3A-6. Liability of ski area operators.
- §20-3A-7. Liability of passenger.
- §20-3A-8. Liability of skiers.

**§20-3A-1. Legislative purpose.**

1 The Legislature finds that the sport of skiing is practiced  
2 by a large number of citizens of West Virginia and also at-  
3 tracts to West Virginia a large number of nonresidents, sig-  
4 nificantly contributing to the economy of West Virginia. Since  
5 it is recognized that there are inherent risks in the sport of  
6 skiing which should be understood by each skier and which  
7 are essentially impossible to eliminate by the ski area operator,  
8 it is the purpose of this article to define those areas of  
9 responsibility and affirmative acts for which ski area opera-  
10 tors shall be liable for loss, damage or injury and those risks  
11 which the skier expressly assumes for which there can be  
12 no recovery.

**§20-3A-2. Definitions.**

1 Unless the context of usage clearly requires otherwise:

2 (a) "Aerial passenger tramway" means any device oper-  
3 ated by a ski area operator used to transport passengers, by  
4 single or double reversible tramway; chair lift or gondola  
5 lift; T-bar lift, J-bar lift, platter lift or similar device; or a  
6 fiber rope tow.

7 (b) "Passenger" means any person who is lawfully using  
8 an aerial passenger tramway, or is waiting to embark or has  
9 recently disembarked from an aerial passenger tramway and is  
10 in its immediate vicinity.

11 (c) "Ski area" means any property owned or leased and  
12 under the control of the ski area operator or operators within  
13 West Virginia.

14 (d) "Ski area operator" means any person, partnership,  
15 corporation or other commercial entity and their agents,  
16 officers, employees or representatives, or the state of West  
17 Virginia, or any political subdivision thereof, who has opera-  
18 tional responsibility for any ski area or aerial passenger tram-  
19 way.

20 (e) "Skiing area" means all slopes and trails not including  
21 any aerial passenger tramway.

22 (f) "Skier" means any person present at a skiing area

23 under the control of a ski area operator for the purpose of  
24 engaging in the sport of skiing by utilizing the ski slopes  
25 and trails, but does not include a passenger using an aerial  
26 passenger tramway.

27 (g) "Ski slopes and trails" means those areas designated  
28 by the ski area operator to be used by skiers for the purpose  
29 of participating in the sport of skiing.

**§20-3A-3. Duties of ski area operators with respect to ski areas.**

1 Every ski area operator shall:

2 (1) Mark all trail maintenance vehicles and furnish such  
3 vehicles with flashing or rotating lights which shall be in  
4 operation whenever the vehicles are working or are in  
5 movement in the skiing area.

6 (2) Mark with a visible sign or other warning implement  
7 the location of any hydrant or similar equipment used in  
8 snowmaking operations and located on ski slopes and trails.

9 (3) Mark conspicuously the top or entrance to each ski  
10 slope, trail or area to designate open or closed and relative  
11 degree of difficulty using the appropriate symbols approved  
12 by the national ski areas association as of the effective date  
13 of this article and as may thereafter be modified by the  
14 association.

15 (4) Maintain one or more trail boards at prominent lo-  
16 cations at each ski area displaying that area's network of  
17 ski trails and slopes with each trail and slope rated thereon  
18 in accordance with the aforementioned symbols' code and  
19 containing a key to the code in accordance with designations  
20 in subdivision (3) herein.

21 (5) Designate by trail board or otherwise which trails  
22 or slopes are open or closed.

23 (6) Place, or cause to be placed, whenever snow grooming  
24 or snowmaking operations are being undertaken upon any trail  
25 or slope while such trail or slope is open to the public, a  
26 conspicuous notice to that effect at or near the top of the  
27 trail or slope.

28 (7) Post notice at prominent locations of the require-  
29 ments of this article concerning the use of ski retention devices.  
30 This obligation shall be the sole requirement imposed upon  
31 the ski area operator regarding the requirement for or use  
32 of ski retention devices.

33 (8) Maintain the ski areas in a reasonably safe con-  
34 dition, except that such operator shall not be responsible  
35 for any injury, loss or damage caused by the following:  
36 Variations in terrain; surface or subsurface snow or ice con-  
37 ditions; bare spots, rocks, trees, other forms of forest growth  
38 or debris; collisions with pole lines, lift towers or any com-  
39 ponent thereof; or, collisions with snowmaking equipment  
40 which is marked by a visible sign or other warning implement  
41 in compliance with subdivision two of this section.

42 (9) When no certified ambulance service is available in  
43 the vicinity, have on duty at or near the skiing area, during  
44 all times that skiing areas are open for skiing, at least one  
45 trained and currently certified emergency medical technician.

**§20-3A-4. Responsibilities of passengers.**

1 No passenger shall:

2 (1) Board or embark upon or disembark from an aerial  
3 passenger tramway except at an area designated for such  
4 purpose;

5 (2) Drop, throw or expel any object from an aerial pas-  
6 senger tramway;

7 (3) Perform any act which interferes with the running or  
8 operation of an aerial passenger tramway;

9 (4) Enter the boarding area of or use any aerial passenger  
10 tramway without requesting and receiving instruction on its  
11 use from the ski area operator, unless the passenger has the  
12 ability to use it safely without instruction;

13 (5) Engage in any harmful conduct, or willfully or negli-  
14 gently engage in any type of conduct which contributes to or  
15 causes injury to any person; or

16 (6) Embark on an aerial passenger tramway without the  
17 authority, expressed or implied, of the ski area operator.

**§20-3A-5. Duties of skiers.**

1 It is recognized that skiing as a recreational sport is haz-  
2 arduous to skiers, regardless of all feasible safety measures  
3 which can be taken.

4 Each skier expressly assumes the risk of and legal respon-  
5 sibility for any injury, loss or damage to person or property  
6 which results from participation in the sport of skiing includ-  
7 ing, but not limited to, any injury, loss or damage caused by  
8 the following: Variations in terrain; surface or subsurface  
9 snow or ice conditions; bare spots, rocks, trees, other forms  
10 of forest growth or debris; collisions with pole lines, lift  
11 towers or any component thereof; or, collisions with snow-  
12 making equipment which is marked by a visible sign or other  
13 warning implement in compliance with section three of this  
14 article. Each skier shall have the sole individual responsibility  
15 for knowing the range of his own ability to negotiate any slope  
16 or trail, and it shall be the duty of each skier to ski within  
17 the limits of the skier's own ability, to maintain reasonable  
18 control of speed and course at all times while skiing, to heed  
19 all posted warnings, to ski only on a skiing area designated by  
20 the ski area operator and to refrain from acting in a manner  
21 which may cause or contribute to the injury of anyone. If  
22 while actually skiing, any skier collides with any object or  
23 person, except an obviously intoxicated person of whom the  
24 ski area operator is aware, the responsibility for such collision  
25 shall be solely that of the skier or skiers involved and not that  
26 of the ski area operator.

27 No person shall place any object in the skiing area or on the  
28 uphill track or on any aerial passenger tramway which may  
29 cause a passenger or skier to fall; or which crosses the track  
30 of any T-bar lift, J-bar lift, platter lift or similar device, or a  
31 fiber rope tow except at a designated location; nor shall any  
32 person involved in a skiing accident depart the ski area with-  
33 out leaving personal identification, including name and ad-  
34 dress, or without notifying the proper authorities or without  
35 obtaining assistance when that person knows or reasonably  
36 should know that any other person involved in the accident  
37 is in need of medical or other assistance. No skier shall fail

38 to wear retention straps or other devices to help prevent run-  
39 away skis.

**§20-3A-6. Liability of ski area operators.**

1 Any ski area operator shall be liable for injury, loss or  
2 damage caused by failure to follow the duties set forth in  
3 section three of this article where the violation of duty is  
4 causally related to the injury, loss or damage suffered. A ski  
5 area operator shall not be liable for any injury, loss or damage  
6 caused by the negligence of any person who is not an agent or  
7 employee of such operator, nor shall a ski area operator be  
8 liable for any injury, loss or damage caused by any object  
9 dropped, thrown or expelled by a passenger from an aerial  
10 passenger tramway. Every ski area operator shall carry public  
11 liability insurance in limits of no less than one hundred thou-  
12 sand dollars per person, three hundred thousand dollars per  
13 occurrence and ten thousand dollars for property damage.

**§20-3A-7. Liability of passengers.**

1 Any passenger shall be liable for injury, loss or damage  
2 resulting from violations of the duties set forth in section  
3 four.

**§20-3A-8. Liability of skiers.**

1 Any skier shall be liable for injury, loss or damage re-  
2 sulting from violations of the duties set forth in section five.

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## CHAPTER 164

(Com. Sub. for H. B. 1485—By Delegate Polan)

[Passed March 10, 1984; in effect January 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section two, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of certain state officers; increasing by twenty percent the salaries of the governor, attorney general, auditor, secretary of state, commissioner of agriculture and treasurer.



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

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

**ARTICLE 7. COMPENSATION AND ALLOWANCES.**

**§6-7-2. Salaries of certain state officers.**

1     Effective on and after the first Monday after the second  
2     Wednesday in January, one thousand nine hundred eighty-five  
3     the salary of the governor shall be seventy-two thousand dol-  
4     lars per year.

5     The salary of the attorney general shall be fifty thousand  
6     four hundred dollars per year; the salary of the auditor shall  
7     be forty-six thousand eight hundred dollars per year; the  
8     salary of the secretary of state shall be forty-three thousand  
9     two hundred dollars per year; the salary of the commissioner  
10    of agriculture shall be forty-six thousand eight hundred dollars  
11    per year; and the salary of the state treasurer shall be fifty  
12    thousand four hundred dollars per year.

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## CHAPTER 165

(Com. Sub. for S. B. 159—By Mr. McGraw, Mr. President)

[Passed March 7, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of certain appointive state officers.

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

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

**ARTICLE 7. COMPENSATION AND ALLOWANCES.****§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.**

1 Notwithstanding any other provision of this code to  
2 the contrary, each of the appointive state officers named  
3 in this section shall be appointed by the governor, by and  
4 with the advice and consent of the Senate. Each of such  
5 appointive state officers shall serve at the will and  
6 pleasure of the governor for the term for which the gov-  
7 ernor was elected and until the respective state officers'  
8 successors have been appointed and qualified. Each of  
9 such appointive state officers shall hereinafter be subject  
10 to the existing qualifications for holding each such respec-  
11 tive office and each shall have and is hereby granted all  
12 of the powers and authority and shall perform all of the  
13 functions and services heretofore vested in and per-  
14 formed by virtue of existing law respecting each such  
15 office. Beginning on the first day of July, one thousand  
16 nine hundred eighty-four, the annual salary of each such  
17 named appointive state officer shall be as follows:

18 The commissioner of highways, forty-seven thousand  
19 five hundred dollars; commissioner of finance and ad-  
20 ministration, forty-five thousand five hundred dollars;  
21 tax commissioner, forty-seven thousand five hundred  
22 dollars; director of the department of health, fifty-four  
23 thousand five hundred dollars; director of the department  
24 of natural resources, forty-five thousand five hundred  
25 dollars; commissioner of the department of human ser-  
26 vices, forty-five thousand five hundred dollars; super-  
27 intendent of the department of public safety, forty-two  
28 thousand five hundred dollars; alcohol beverage control  
29 commissioner, thirty-six thousand five hundred dollars;  
30 commissioner of banking, thirty-six thousand five hun-  
31 dred dollars; director of the department of mines, forty-  
32 two thousand five hundred dollars; state workers' com-  
33 pensation commissioner, thirty-six thousand five hundred  
34 dollars; director of personnel, civil service commission,  
35 thirty-six thousand five hundred dollars; commissioner

36 of corrections, thirty-six thousand five hundred dollars;  
37 commissioner of culture and history, thirty-six thousand  
38 five hundred dollars; labor commissioner, thirty-four  
39 thousand dollars; commissioner of employment security,  
40 thirty-four thousand dollars; insurance commissioner,  
41 thirty-five thousand dollars; commissioner of motor  
42 vehicles, thirty-six thousand five hundred dollars; ad-  
43 jutant general, thirty-four thousand dollars; director of  
44 emergency services, thirty thousand five hundred dollars;  
45 nonintoxicating beer commissioner, thirty thousand five  
46 hundred dollars; director of veterans affairs, thirty thou-  
47 sand five hundred dollars; members of the board of re-  
48 view of employment security and members of workers'  
49 compensation appeal board, seventeen thousand dollars;  
50 and members of the board of probation and parole,  
51 twenty-seven thousand dollars.

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## CHAPTER 166

(H. B. 1216—By Delegate Knight and Delegate Faircloth)

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[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

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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 rescheduling the termination date of certain governmental entities or programs.

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

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

### ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

#### §4-10-4. Termination of governmental entities or programs.

1 The following governmental entities and programs shall

2 be terminated on the date indicated but no governmental  
3 entity or program shall be terminated under this article  
4 unless a performance audit has been conducted of such entity  
5 or program, except as authorized under section fourteen of this  
6 article:

7 (1) On the first day of July, one thousand nine hundred  
8 eighty-one: Judicial council of West Virginia; geological and  
9 economic survey commission; motor vehicle certificate appeal  
10 board; child welfare licensing board.

11 (2) On the first day of July, one thousand nine hundred  
12 eighty-two: Ohio River basin commission; commission on post-  
13 mortem examination; state commission on manpower, training  
14 and technology.

15 (3) On the first day of July, one thousand nine hundred  
16 eighty-three: Anatomical board; economic opportunity ad-  
17 visory commission; community development authority board.

18 (4) On the first day of July, one thousand nine hundred  
19 eighty-four: Office of the workers' compensation commis-  
20 sioner; capitol building commission; the following divisions  
21 or programs or the department of agriculture: Soil con-  
22 servation committee, rural resource division, meat inspection;  
23 and the following divisions or programs of the department  
24 of natural resources: U.S. geological survey, rabies con-  
25 trol, work incentive program; West Virginia alcoholic beverage  
26 control licensing advisory board; driver's licensing advisory  
27 board; oil and gas inspectors' examining board; women's com-  
28 mission.

29 (5) On the first day of July, one thousand nine hundred  
30 eighty-five: Department of welfare; beautification commis-  
31 sion; labor management advisory council; employment security  
32 advisory council; oil and gas conservation commission; board  
33 of regents; water resources board; water resources division  
34 of the department of natural resources.

35 (6) On the first day of July, one thousand nine hundred  
36 eighty-six: Division of archives and history; state board of

37 insurance; interstate commission on the Potomac River basin;  
38 public service commission; health resources advisory council;  
39 welfare advisory council; board of banking and financial  
40 institutions: *Provided*, That in the case of the public service  
41 commission, the study by the committee required by this  
42 article shall be completed on or before the first day of July,  
43 one thousand nine hundred eighty-five, and shall be by such  
44 date transmitted to the joint committee on government and  
45 finance for review by the joint committee or its subcommittee  
46 designated pursuant to section one, article one, chapter twenty-  
47 four of this code for review, examination and study of the  
48 operations of the public service commission; state building  
49 commission; public employees insurance board.

50 (7) On the first day of July, one thousand nine hundred  
51 eighty-seven: The geological and economic survey; the com-  
52 mission on uniform state laws; department of labor; civil  
53 service commission advisory board; council of finance and  
54 administration; motorcycle safety standards and specifications  
55 board.

56 (8) On the first day of July, one thousand nine hundred  
57 eighty-eight: Information system advisory commission;  
58 veteran's council; labor management relations board; board  
59 of investments; records management and preservation advisory  
60 committee; minimum wage rate board; Ohio River Valley  
61 water sanitation commission; southern regional education  
62 board; department of corrections.

63 (9) On the first day of July, one thousand nine hundred  
64 eighty-nine: Mental retardation advisory committee; inter-  
65 agency committee on pesticides; commission on charitable  
66 organizations; board of school finance; veteran's affairs ad-  
67 visory council; emergency medical services advisory council;  
68 pesticides board of review; reclamation commission.

69 (10) On the first day of July, one thousand nine hundred  
70 ninety: Consumer affairs advisory council; savings and loan  
71 association; forest industries industrial foundation.

## CHAPTER 167

(H. B. 1316—By Delegate Faircloth)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and five, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to form of landbooks; definitions used in the assessment of real property; and information to be obtained from landowners by assessor.

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

That sections two, three and five, article 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 4. ASSESSMENT OF REAL PROPERTY.

§11-4-2. Form of landbooks.

§11-4-3. Definitions.

§11-4-5. Information to be obtained from landowners by assessor; corrections in landbook of previous year.

#### §11-4-2. Form of landbooks.

1 The tax commissioner shall prescribe a form of landbook  
2 and the information and itemization to be entered therein,  
3 which shall include separate entries of:

4 (1) All real property or whatever portion thereof in  
5 square feet that is owned, used and occupied by the owner  
6 exclusively for residential purposes, including mobile homes,  
7 permanently affixed to the land and owned by the owner of  
8 the land; (2) all farms including land used for agricul-  
9 ture, horticulture and grazing occupied by the owner or  
10 bona fide tenant; (3) all other real property; and, for each  
11 entry there shall be shown; (4) the value of land, the  
12 value of buildings and the aggregate value; (5) the character  
13 and estate of the owners, the number of acres or lots  
14 and the local description of the tracts or lots; (6) the  
15 amount of taxes assessed against each tract or lot for all  
16 purposes.

**§ 11-4-3. Definitions.**

1 For the purpose of giving effect to the "Tax Limitations  
2 Amendment" this chapter shall be interpreted in accordance  
3 with the following definitions, unless the context clearly re-  
4 quires a different meaning:

5 "Owner" shall mean the person who is possessed of the  
6 freehold, whether in fee or for life. A person seized or  
7 entitled in fee subject to a mortgage or deed of trust securing  
8 a debt or liability shall be deemed the owner until the  
9 mortgagee or trustee takes possession, after which such  
10 mortgagee or trustee shall be deemed the owner. A person  
11 who has an equitable estate of freehold, or is a purchaser  
12 of a freehold estate who is in possession before transfer of  
13 legal title shall also be deemed the owner.

14 "Used and occupied by the owner thereof exclusively for  
15 residential purpose" shall mean actual habitation by the  
16 owner of all or a portion of a parcel of real property as a  
17 place of abode to the exclusion of any commercial use. If a  
18 license is required for an activity on the premises or if an  
19 activity is conducted thereon which involves the use of equip-  
20 ment of a character not commonly employed solely for domestic  
21 as distinguished from commercial purposes, the use shall  
22 not be construed to be exclusively residential.

23 "Farm" shall mean a tract or contiguous tracts of land  
24 used for agriculture, horticulture or grazing.

25 "Occupied and cultivated" shall mean subjected as a unit  
26 to farm purposes, whether used for habitation or not, and  
27 although parts may be lying fallow, in timber or in wastelands.

**§ 11-4-5. Information to be obtained from landowners by assessor;  
corrections in landbook of previous year.**

1 The assessor and his deputies shall annually, when list-  
2 ing and assessing personal and real property, make diligent  
3 inquiry of every resident landowner, and of the resident  
4 agents of any nonresident landowner, as to the number of  
5 acres of land owned by them, the number of acres in each  
6 tract, and the number of town lots owned by them, and the

7 value per acre of each tract and the local description thereof,  
8 and the value and location of the town lots.

9 They shall determine the nature and extent of the interest  
10 of the owner, whether in fee and undivided or otherwise,  
11 and the character of use to which the property is put, whether  
12 residential or agricultural or otherwise. They shall also in-  
13 quire of such owners or agents whether the entries charged  
14 against them in the landbooks of the previous year are cor-  
15 rect, whether any part thereof ought to be transferred to any  
16 other person, and if so to whom, and the nature of the  
17 evidence to authorize such transfer; also, whether any other  
18 land in the county ought to be charged to such resident or non-  
19 resident, and whether the description given to any tract of land  
20 or town lot in the book of the previous year is incorrectly  
21 given. It shall be the duty of such owners and agents to  
22 answer all of such inquiries on oath. The assessor shall pro-  
23 vide for himself, and for each one of his deputies, a copy of so  
24 much of the landbook of the previous year as contains a list  
25 of the land in the tax districts severally apportioned to them,  
26 and shall note in such copies such changes and corrections  
27 as ought to be made in the landbook of the previous year,  
28 according to the information obtained. The deputy assessor  
29 shall report any such changes and corrections, as appear to  
30 them should be made, to the assessor at some of the stated  
31 meetings provided for. The assessor shall make such use of  
32 the information so obtained as he can properly make, con-  
33 sistent with the other provisions of this chapter, in making  
34 out the landbook of the county for the current year.

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## CHAPTER 168

(Com. Sub. for S. B. 696—By Senator Williams and Senator Spears)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assessment of public service corporations and businesses for ad



valorem tax purposes; approving, codifying and directing continuance of the long-term method of apportionment of the state auditor, consistently engaged in, for apportioning the values of operating properties of public service corporations and businesses among the counties, districts and municipalities; providing sufficient minimal guidelines as basis for state auditor to promulgate reasonable rules and regulations in respect to long-term consistently engaged in apportionment method; and directing that the state auditor proceed in a timely manner to perform all actions required of him in respect to such apportionment as heretofore.

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

That section thirteen, article six, 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 6. ASSESSMENT OF PUBLIC SERVICE CORPORATIONS.**

**§11-6-13. Apportionment of value among counties, districts and municipalities.**

1 In case the list and valuation of the property filed with  
2 the tax commissioner as aforesaid, be satisfactory to the  
3 board of public works, or upon assessment of the property  
4 of such owner or operator being made by the board of  
5 public works as aforesaid, the auditor shall immediately  
6 apportion to each county, both as to the fixed situs proper-  
7 ty and the nonfixed but distributable and apportionable  
8 operating property, the relative value of such operating  
9 property within each county to the value of the total  
10 operating property within the state, to be determined  
11 upon such factors as the auditor shall deem proper and in  
12 respect to the value of property of every such owner or  
13 operator as valued or assessed as aforesaid; and further  
14 shall apportion such value as aforesaid among the several  
15 districts, school districts and independent school districts  
16 therein, according to the value thereof, as near as may be  
17 and forthwith shall certify to the county commission of  
18 such county the values so apportioned. The clerk of the  
19 county commission shall forthwith certify such values to

20 the several districts, school districts, independent school  
21 districts and municipalities, respectively, in such county.

22 Inasmuch as there is currently litigation challenging  
23 the long-term apportionment method and manner con-  
24 sistently engaged in by the state auditor under the provi-  
25 sions of this section and by which the valuation of oper-  
26 able public service corporations properties, for ad valorem  
27 tax purposes, were apportioned; and which method or  
28 manner is nationally recognized as a proper apportion-  
29 ment of operating properties and values without fixed  
30 situs but requiring fair apportionment, which proper  
31 method is hereby approved fully and codified by this  
32 section for the purpose of setting forth sufficient minimal  
33 guidelines as a basis from which the auditor is hereby  
34 authorized to promulgate reasonable rules and regulations  
35 in respect to such long-term consistently engaged in  
36 apportionment method. All calculations, apportionments,  
37 distributions or other required actions by the state audi-  
38 tor in respect to the requirements of this section or related  
39 statutes in connection with his duties of apportionment  
40 are hereby directed to proceed in a timely manner and on  
41 the basis of said approval and codification of such long-  
42 term prior apportionment method.

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## CHAPTER 169

(Com. Sub. for H. B. 1017—By Delegate Spencer)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twelve, chapter eleven; to amend article two, chapter twenty-one-a, by adding thereto a new section, designated section six-b; and to amend and reenact section two, article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to reciprocal exchange of business franchise registration information for the purpose of joint registration of business; creating a single point

of registration program within the tax department and the departments of employment security and workers' compensation; providing for the exchange of information among these departments; mandating that the commissioners of employment security and workers' compensation initiate contact with new business; making it a misdemeanor to misuse information received pursuant to the single point of registration program; and allocating costs of the exchange of information to the receiving department.

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

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

#### **Chapter**

- 11. Taxation.
- 21A. Unemployment Compensation.
- 23. Workers' Compensation.

### **CHAPTER 11. TAXATION.**

#### **ARTICLE 12. BUSINESS FRANCHISE REGISTRATION TAX.**

##### **§11-12-7. Display of registration certificate; injunction; public information, reciprocal exchange of information.**

1 Any person to whom a certificate of registration shall be  
 2 issued under the provisions of section four of this article  
 3 shall keep such certificate posted in a conspicuous position  
 4 in the place where the privilege of such business is exercised.  
 5 Such certificate of registration shall be produced for inspection  
 6 whenever required by the tax commissioner or by any law-  
 7 enforcement officers of this state, county or municipality where-  
 8 in the privileges to conduct business are exercised.

9 No injunction shall issue from any court in the state  
 10 enjoining the collection of any business registration certificate

11 tax required herein; and any person claiming that any busi-  
12 ness certificate is not due, for any reason, shall pay the same  
13 under protest and petition the tax commissioner for a refund in  
14 accordance with the provisions of section fourteen, article  
15 ten of this chapter.

16 If any person engaging in or prosecuting any business, or  
17 trade, contrary to any other provisions of this article, whether  
18 without obtaining a business certificate therefor before com-  
19 mencing the same, or by continuing the same after the termina-  
20 tion of the effective period of any such business certificate,  
21 the circuit court or the judge thereof in vacation, of the  
22 county in which such violation occurred, shall, upon proper  
23 application in the name of the state, and after ten days'  
24 written notice thereof to such person, grant an injunction  
25 prohibiting such person from continuing such business, activity  
26 or trade until he has fully complied with the provisions of this  
27 article. The remedy provided in this section shall be in addi-  
28 tion to all other penalties and remedies provided by law.

29 The tax commissioner shall make available, when requested,  
30 information as to whether a person is registered to do business  
31 in the state of West Virginia.

32 The tax commissioner shall deliver to the commissioner of  
33 employment security and the department of workers' compen-  
34 sation, the information contained in the business franchise  
35 registration certificate, when this information is used to im-  
36 plement and administer a single point of registration program  
37 for persons engaging in any business activity in the state of  
38 West Virginia. The single point of registration program shall  
39 provide that, once an individual has received a business fran-  
40 chise registration certificate, the tax commissioner shall notify  
41 the commissioners of the department of workers' compensation  
42 and the department of employment security of the names, ad-  
43 dresses and other identifying information of that individual  
44 or entity. Upon receiving this information the commissioners  
45 of the department of workers' compensation and the depart-  
46 ment of employment security shall contact all businesses re-  
47 ceiving a business franchise registration certificate and provide  
48 all necessary forms and paperwork to register the business

49 within their respective departments, pursuant to subsection  
50 (b), section six-b, article two, chapter twenty-one-a and sub-  
51 section (c), section two, article two, chapter twenty-three of  
52 this code.

53 Notwithstanding the provisions of section five, article ten  
54 of this chapter, the tax commissioner may enter into a recip-  
55 cal agreement with the governor's office of economic and com-  
56 munity development and other departments or agencies of  
57 this state for the exchange of information contained in the  
58 application for a business franchise registration certificate  
59 filed under section four of this article, when the purpose  
60 for the exchange is to implement and administer a single-point  
61 registration program for persons engaging in business in this  
62 state. Such other departments and agencies shall have authority  
63 to enter into a reciprocal exchange agreement for this pur-  
64 pose notwithstanding any provision of this code to the contrary.

#### CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

##### ARTICLE 2. THE COMMISSIONER OF EMPLOYMENT SECURITY.

##### **§21A-2-6b. Commissioner to be furnished information by state tax commissioner; secrecy of information; violation a misdemeanor.**

1 (a) Notwithstanding the provisions of any other statute  
2 in this code, specifically, but not exclusively, section five,  
3 article ten, chapter eleven of this code, the state tax commis-  
4 sioner shall deliver to the commissioner of employment se-  
5 curity the following information: The names, addresses and  
6 other identifying information of all businesses receiving a busi-  
7 ness franchise registration certificate.

8 (b) All information acquired by the employment security  
9 commissioner pursuant to subsection (a) of this section shall  
10 be used to implement and administer a single point of registra-  
11 tion program as created in section seven, article twelve, chap-  
12 ter eleven of this code. The commissioner of employment se-  
13 curity, upon receiving the business franchise certificate infor-  
14 mation made available pursuant to subsection (a) of this  
15 section, shall contact all businesses receiving a business fran-  
16 chise registration certificate and provide all necessary forms to

17 register the business under the provisions of article five of this  
18 chapter.

19 (c) Any officer or employee of this state who uses the  
20 aforementioned information in any manner other than the one  
21 stated herein or authorized elsewhere in this code or who di-  
22 vulges or makes known in any manner any of the aforemen-  
23 tioned information shall be guilty of a misdemeanor, and,  
24 upon conviction thereof, shall be fined not more than one  
25 thousand dollars or imprisoned in the county jail for not more  
26 than one year, or both, together with cost of prosecution.

27 (d) Reasonable cost of compilation and production of any  
28 information made available pursuant to subsection (a) of this  
29 section shall be charged to the department of employment  
30 security.

31 (e) Information acquired by the employment security com-  
32 missioner pursuant to subsection (a) of this section shall not  
33 be subject to disclosure under the provisions of chapter twenty-  
34 nine-b of this code.

## CHAPTER 23. WORKERS' COMPENSATION.

### ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAP- TER; EXTRATERRITORIAL COVERAGE.

#### **§23-2-2. Commissioner to be furnished information by employers, state tax commissioner and commissioner of the depart- ment of employment security; secrecy of information; examination of employers, etc.; violation a misde- meanor.**

1 (a) Every employer shall furnish the commissioner, upon  
2 request, all information required by him to carry out the pur-  
3 poses of this chapter. The commissioner, or any person em-  
4 ployed by the commissioner for that purpose, shall have the  
5 right to examine under oath any employer or officer, agent  
6 or employee of any employer.

7 (b) Notwithstanding the provisions of any other statute,  
8 specifically, but not exclusively, section five, article ten, chap-  
9 ter eleven of this code, and section eleven, article ten, chapter

10 twenty-one-a of this code, the commissioner of workers' com-  
11 pensation may receive the following information:

12 (1) Upon written request to the state tax commissioner: The  
13 names, addresses and other identifying information of all busi-  
14 nesses filing state business and occupation tax returns and/or  
15 receiving a business franchise registration certificate.

16 (2) Upon written application to the commissioner of the  
17 department of employment security: The names, addresses and  
18 other identifying information of all employing units filing re-  
19 ports and information pursuant to section eleven, article ten,  
20 chapter twenty-one-a of this code as well as information con-  
21 tained in those reports regarding the number of employees em-  
22 ployed and the gross quarterly wages paid by each employing  
23 unit.

24 (c) All information acquired by the workers' compensation  
25 commissioner pursuant to subsection (b) of this section shall be  
26 used only for auditing premium payments and registering busi-  
27 nesses under the single point of registration program as de-  
28 fined in section two, article one, chapter eleven of this code.  
29 The workers' compensation commissioner, upon receiving the  
30 business franchise registration certificate information made  
31 available pursuant to subsection (b) of this section, shall con-  
32 tact all businesses receiving a business franchise registration  
33 certificate and provide all necessary forms to register the busi-  
34 ness under the provisions of this article. Any officer or em-  
35 ployee of this state who uses the aforementioned information in  
36 any manner other than the one stated herein or elsewhere au-  
37 thORIZED in this code, or who divulges or makes known in any  
38 manner any of the aforementioned information shall be guilty  
39 of a misdemeanor, and, upon conviction thereof, shall be fined  
40 not more than one thousand dollars or imprisoned in the coun-  
41 ty jail for not more than one year, or both, together with  
42 cost of prosecution.

43 (d) Reasonable costs of compilation and production of any  
44 information made available pursuant to subsection (b) of this  
45 section shall be charged to the department of workers' com-  
46 pensation.

47 (e) Information acquired by the workers' compensation  
48 commissioner pursuant to subsection (b) of this section shall  
49 not be subject to disclosure under the provisions of chapter  
50 twenty-nine-b of this code.

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## CHAPTER 170

(Com. Sub. for S. B. 333—By Senator Boettner)

[Passed March 3, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to repeal section twelve, article twelve; section twenty-two, article twelve-a; section twenty-one, article thirteen; section nine, article fourteen; section ten, article fourteen-a; section twenty-nine, article fifteen; sections eight, nineteen and twenty, article fifteen-a; section ninety-two, article twenty-one; and section thirty-eight, article twenty-four, all of chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend said chapter by adding thereto a new article, designated article nine; and to amend and reenact section four, article fifteen of said chapter, all relating generally to criminal offenses and criminal penalties for certain violations of state tax law; making it a misdemeanor to: Willfully fail to pay tax for more than thirty days after its due date; willfully fail to file a tax return or report for more than thirty days after its due date; willfully fail to account for and pay over another's tax in the manner required by law for more than thirty days after its due date when the amount of tax is less than one thousand dollars; willfully fail to collect or withhold tax in manner required by law; represent, advertise or state to public or any purchaser, lessee or employee that tax to be collected or withheld will be absorbed or assumed or that such tax is not part of the sales price or wages payable; willfully fail to maintain any records in manner required by law or regulation to compute, assess, withhold or collect any tax; willfully fail to supply any information in manner required by law or regulation to compute, assess, withhold or collect any tax; present to any vendor a certification for the purpose of obtaining exemption from consumers sales and service or



use taxes and then knowingly using the item or service purchased in manner that is not exempt from tax without remitting such tax in manner required by law; knowingly aid, abet, assist or counsel another person in commission of any criminal violation of this article; engage in business for more than thirty days without obtaining a business franchise registration certificate when required by law; engage in business for more than thirty days without posting business franchise registration certificate in place of business as required by law; engage in business for more than thirty days without payment of business franchise registration tax as required by law; engage in business for more than thirty days after expiration of period of time for which business franchise registration certificate was granted without obtaining a new certificate; engage in business for more than thirty days after business franchise registration certificate has been revoked; providing criminal penalties for such misdemeanor offenses; making it a felony to: Willfully fail to account for and pay over another's tax in the manner required by law for more than thirty days after its due date when amount of tax is one thousand dollars or more; knowingly file false or fraudulent return, report or other document; willfully deliver or disclose to tax commissioner any list, return, account, statement, record or other document known by person delivering or disclosing same to be fraudulent or false as to any material matter and with intent of obtaining or assisting another in obtaining any credit, refund, deduction, exemption or reduction in tax not otherwise permitted by law; willfully attempt in any manner to evade tax or payment thereof; providing criminal penalties for such felony offenses; providing short title of article; providing rules of construction; specifying tax laws to which this article applies; defining certain terms; authorizing release on probation of offenders convicted pursuant to this article; providing that a period of public service may be imposed as a condition of such probation; prescribing venue for institution of criminal proceedings; providing a three-year statute of limitations for commencement of such criminal proceedings; making article effective on the first day of July, one thousand nine hundred eighty-four; and preserving existing law as to

criminal violations occurring prior to effective date of this article.

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

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

**Article**

**9. Crimes and Penalties.**

**15. Consumers Sales Tax.**

**ARTICLE 9. CRIMES AND PENALTIES.**

- §11-9-1. Short title; arrangement; classification.
- §11-9-2. Application of this article.
- §11-9-3. Definitions.
- §11-9-4. Failure to pay tax or file return or report.
- §11-9-5. Failure to account for and pay over another's tax.
- §11-9-6. Failure to collect or withhold tax.
- §11-9-7. False statements to purchasers, lessees or employees relating to tax.
- §11-9-8. Willful failure to maintain records or supply information; misuse of exemption certificate.
- §11-9-9. Aiding, abetting, assisting or counseling in criminal violation.
- §11-9-10. Attempt to evade tax.
- §11-9-11. Engaging in business without payment of business franchise registration tax; posting business franchise certificate.
- §11-9-12. Engaging in business without a business franchise registration certificate.
- §11-9-13. Release on probation; conditions of probation.
- §11-9-14. Venue.
- §11-9-15. Limitation on prosecution.
- §11-9-16. Effective date; former law preserved for certain purposes.

**§11-9-1. Short title; arrangement; classification.**

- 1 This article may be cited as the "West Virginia Tax
- 2 Crimes and Penalties Act." No inference, implication or

3 presumption of legislative construction shall be drawn or  
4 made by reason of the location or grouping of any particular  
5 section or provision or portion of this article, and no legal  
6 effect shall be given to any descriptive matter or headings  
7 relating to any part, section, subsection or paragraph of this  
8 article.

**§11-9-2. Application of this article.**

1 (a) The provisions of this article shall apply to the  
2 following taxes imposed by chapter eleven: (1) The  
3 inheritance and transfer taxes imposed by article eleven; (2)  
4 the business franchise registration tax imposed by article  
5 twelve; (3) the annual tax on incomes of certain carriers  
6 imposed by article twelve-a; (4) the business and  
7 occupation tax imposed by article thirteen; (5) the gasoline  
8 and special fuels excise tax imposed by article fourteen; (6)  
9 the motor carrier road tax imposed by article fourteen-a; (7)  
10 the consumers sales and service tax imposed by article  
11 fifteen; (8) the use tax imposed by article fifteen-a; (9) the  
12 cigarette tax imposed by article seventeen; (10) the soft  
13 drinks tax imposed by article nineteen; (11) the personal  
14 income tax imposed by article twenty-one; and (12) the  
15 corporation net income tax imposed by article twenty-four.

16 (b) The provisions of this article shall also apply to the  
17 West Virginia tax procedures and administration act in  
18 article ten of chapter eleven.

19 (c) Each and every provision of this article shall apply to  
20 the articles of this chapter listed in subsections (a) and (b),  
21 with like effect.

**§11-9-3. Definitions.**

1 For the purposes of this article, the term:

2 (1) "Person" means any individual, firm, partnership,  
3 limited partnership, copartnership, joint venture,  
4 association, corporation, municipal corporation,  
5 organization, receiver, estate, trust, guardian, executor,  
6 administrator, and any officer, employee or member of any  
7 of the foregoing who, as such officer, employee or member,  
8 is under a duty to perform or is responsible for the  
9 performance or nonperformance of the act in respect of  
10 which a violation occurs under this article.

11 (2) "Return or report" means any return or report  
12 required to be filed by any article of this chapter imposing  
13 any tax to which this article applies as specified in section  
14 two of this article.

15 (3) "Tax" or "taxes" means any tax to which this article  
16 applies, as specified in section two of this article, and  
17 includes additions to tax, penalties and interest unless the  
18 intention to give it a more limited meaning is disclosed by  
19 the context in which the term "tax" or "taxes" is used.

20 (4) "Tax commissioner" or "commissioner" means the  
21 tax commissioner of the state of West Virginia or his  
22 delegate.

23 (5) "This chapter" means chapter eleven of the code of  
24 West Virginia, one thousand nine hundred thirty-one, as  
25 amended, and shall include only those articles of chapter  
26 eleven listed in section two of this article.

27 (6) "Willfully" means the intentional violation of a  
28 known legal duty to perform any act, required to be  
29 performed by any provision of this chapter, in respect of  
30 which the violation occurs: *Provided*, That the mere failure  
31 to perform any act shall not be a willful violation under this  
32 article. A willful violation of this article requires that the  
33 defendant had knowledge of or notice of a duty to perform  
34 such act, and that the defendant, with knowledge of or  
35 notice of such duty, intentionally failed to perform such act.

36 (7) "Evade" means to willfully and fraudulently commit  
37 any act with the intent of depriving the state of payment of  
38 any tax which there is a known legal duty to pay under this  
39 chapter.

40 (8) "Fraud" means any false representation or  
41 concealment as to any material fact made by any person  
42 with the knowledge that it is not true and correct, with the  
43 intent that such representation or concealment be relied  
44 upon by the state.

**§11-9-4. Failure to pay tax or file return or report.**

1 Any person required by any provision of this chapter to  
2 pay any tax, or to file any return or report, who willfully

3 fails to pay such tax, or willfully fails to file such return or  
4 report, more than thirty days after the date such tax is  
5 required to be paid by law, is guilty of a misdemeanor, and,  
6 upon conviction thereof, shall be fined not less than one  
7 hundred dollars nor more than one thousand dollars, or  
8 imprisoned in the county jail not more than six months, or  
9 both fined and imprisoned. Each failure to pay tax, or file a  
10 return or report, more than thirty days after its due date for  
11 any tax period is a separate offense under this section and  
12 punishable accordingly: *Provided*, That thirty days prior to  
13 instituting criminal proceedings under this section, the tax  
14 commissioner shall give the person written notice of any  
15 failure to pay a tax or to file a return or report. Such notice  
16 shall be served on the person by certified mail or by  
17 personal service. The provisions of this section shall not  
18 apply to the business franchise registration tax imposed by  
19 article twelve of chapter eleven.

**§11-9-5. Failure to account for and pay over another's tax.**

1 Any person required by any provision of this chapter to  
2 collect, or withhold, account for and pay over any tax, who  
3 willfully fails to truthfully account for and pay over such  
4 tax in the manner required by law, more than thirty days  
5 after the date such tax is required to be accounted for and  
6 paid over by law, is guilty of a felony if the amount of tax not  
7 paid over is one thousand dollars or more, and, upon  
8 conviction thereof, shall be fined not less than five thousand  
9 dollars nor more than twenty-five thousand dollars, or  
10 imprisoned in the penitentiary not less than one nor more  
11 than three years, or, in the discretion of the court be  
12 confined in the county jail not more than one year, or both  
13 fined and imprisoned; or, is guilty of a misdemeanor if the  
14 amount of tax not paid over is less than one thousand  
15 dollars, and, upon conviction thereof, shall be fined not less  
16 than five hundred dollars nor more than five thousand  
17 dollars, or imprisoned in the county jail not more than six  
18 months, or both fined and imprisoned. Each failure to  
19 account for and pay over tax for any tax period under this  
20 section is a separate offense and punishable accordingly:  
21 *Provided*, That thirty days prior to instituting a criminal  
22 proceeding under this section, the tax commissioner shall

23 give the person written notice of the failure to truthfully  
24 account for and pay over tax. Such notice shall be served on  
25 the person by certified mail or personal service.

**§11-9-6. Failure to collect or withhold tax.**

1 Any person required by any provision of this chapter to  
2 collect or withhold any tax, who willfully fails to collect or  
3 withhold such tax in the manner required by law, is guilty  
4 of a misdemeanor, and, upon conviction thereof, shall be  
5 fined not less than one hundred dollars nor more than five  
6 hundred dollars, or imprisoned in the county jail not more  
7 than six months, or both fined and imprisoned. Each month  
8 or fraction thereof during which such failure continues is a  
9 separate offense under this section and punishable  
10 accordingly.

**§11-9-7. False statements to purchasers, lessees or employees relating to tax.**

1 Any person required by law to collect or withhold any  
2 tax, who represents, advertises or states to the public or to  
3 any purchaser, lessee or employee that he will absorb or  
4 assume payment of any part of such tax or that such tax is  
5 not to be considered as part of or added to the sales price, or  
6 wages payable, is guilty of a misdemeanor, and, upon  
7 conviction thereof, shall be fined not less than one hundred  
8 dollars nor more than one thousand dollars, or imprisoned  
9 in the county jail not more than six months, or both fined  
10 and imprisoned.

**§11-9-8. Willful failure to maintain records or supply information; misuse of exemption certificate.**

1 If any person: (1) Willfully fails to maintain any records,  
2 or supply any information, in the manner required by this  
3 chapter or regulations therefor promulgated in accordance  
4 with law, to compute, assess, withhold or collect any tax  
5 imposed by this chapter; or (2) presents to any vendor a  
6 certificate for the purpose of obtaining an exemption from  
7 the tax imposed by article fifteen or fifteen-a of this  
8 chapter and then knowingly uses the item or service  
9 purchased in a manner that is not exempt from such tax  
10 without remitting such tax in the manner required by law,  
11 such person is guilty of a misdemeanor, and, upon

12 conviction thereof, shall be fined not less than one hundred  
13 dollars nor more than one thousand dollars, or imprisoned  
14 in the county jail not more than six months, or both fined  
15 and imprisoned.

**§11-9-9. Aiding, abetting, assisting or counseling in criminal violation.**

1 Any person who shall knowingly aid or abet or assist or  
2 counsel another person in the commission of any act  
3 prohibited by this article, whether or not such act is with  
4 the knowledge or consent of the person required by law to  
5 do the act, is guilty of a misdemeanor, and, upon conviction  
6 thereof, shall be fined not less than one hundred dollars nor  
7 more than one thousand dollars, or imprisoned in the  
8 county jail not more than six months, or both fined and  
9 imprisoned.

**§11-9-10. Attempt to evade tax.**

1 If any person: (1) Knowingly files a false or fraudulent  
2 return, report or other document under any provision of this  
3 chapter; or (2) willfully delivers or discloses to the tax  
4 commissioner any list, return, account, statement, record or  
5 other document known by him to be fraudulent or false as to  
6 any material matter with the intent of obtaining or assisting  
7 another person in obtaining any credit, refund, deduction,  
8 exemption or reduction in tax not otherwise permitted by  
9 this chapter; or (3) willfully attempts in any other manner to  
10 evade any tax imposed by this chapter or the payment  
11 thereof, is guilty of a felony, and, notwithstanding any other  
12 provision of the code, upon conviction thereof, shall be  
13 fined not less than one thousand dollars nor more than ten  
14 thousand dollars, or imprisoned in the penitentiary not less  
15 than one nor more than three years, or, in the discretion of  
16 the court be confined in the county jail not more than one  
17 year, or both fined and imprisoned.

**§11-9-11. Engaging in business without payment of business franchise registration tax; posting business franchise registration certificate.**

1 If any person for more than thirty days:  
2 (1) Engages in business without posting a business

3 franchise registration certificate in the place of business in  
4 the manner required by law; (2) engages in business without  
5 payment of the business franchise registration tax when  
6 required by law; (3) engages in business after expiration of  
7 the period of time for which such certificate was granted  
8 without obtaining a new certificate; or (4) engages in  
9 business after the business franchise registration has been  
10 revoked, such person is guilty of a misdemeanor, and, upon  
11 conviction thereof, shall be fined one hundred dollars. Each  
12 day or part thereof that any violation continues is a separate  
13 offense and punishable accordingly: *Provided*, That the tax  
14 commissioner shall promulgate rules and regulations  
15 pursuant to chapter twenty-nine-a of this code relating to  
16 the posting of business franchise registration certificates,  
17 and violations of those rules and regulations shall constitute  
18 an offense under this section.

**§11-9-12. Engaging in business without a business franchise registration certificate.**

1 If any person engages in business within the state of West  
2 Virginia without obtaining a business franchise  
3 registration certificate when required by law, such person  
4 is guilty of a misdemeanor, and, upon conviction thereof,  
5 shall be fined not less than one thousand dollars nor more  
6 than ten thousand dollars.

**§11-9-13. Release on probation; conditions of probation.**

1 Any circuit court of this state shall have the authority as  
2 provided in article twelve, chapter sixty-two of this code, to  
3 place on probation any person convicted of a crime  
4 pursuant to this article. Release on probation shall be upon  
5 the conditions required by section nine, article twelve, chap-  
6 ter sixty-two of this code, and such conditions may include,  
7 but need not be limited to, a specified period of public or  
8 community service by the probationer.

**§11-9-14. Venue.**

1 The tax commissioner or any other public officer  
2 initiating proceedings against any person shall do so in the  
3 county of this state wherein such person resides, if any  
4 element of the offense occurred in the county of residence,  
5 or if no element of the offense occurs in the county of



6 residence, then the county where the offense was  
7 committed.

**§11-9-15. Limitation on prosecution.**

1 Every prosecution for any offense arising under this  
2 article shall be commenced within three years after the  
3 offense was committed, notwithstanding any provision of  
4 this code to the contrary.

**§11-9-16. Effective date; former law preserved for certain purposes.**

1 (a) The provisions of this article shall take effect on the  
2 first day of July, one thousand nine hundred eighty-four,  
3 and shall apply to criminal violations of this chapter  
4 committed on or after such date.

5 (b) Any criminal violation of this chapter occurring  
6 before the first day of July, one thousand nine hundred  
7 eighty-four, that would have been punishable under one of  
8 the sections of this chapter repealed by this act, shall  
9 nevertheless be punishable under those sections, as in effect  
10 on the first day of January, one thousand nine hundred  
11 eighty-four, and for such purpose the following sections of  
12 this chapter are fully and completely preserved: Section  
13 twelve of article twelve, section twenty-two of article  
14 twelve-a, section twenty-one of article thirteen, section  
15 nine of article fourteen, section ten of article fourteen-a,  
16 section twenty-nine of article fifteen, sections nineteen and  
17 twenty of article fifteen-a, section ninety-two of article  
18 twenty-one and section thirty-eight of article twenty-four.

**§11-9-17. Severability.**

1 If any provision of this article or the application thereof  
2 to any person or circumstance is held unconstitutional or  
3 invalid, such unconstitutionality or invalidity shall not  
4 affect, impair or invalidate other provisions or applications  
5 of the article, and to this end the provisions of this article  
6 are declared to be severable.

**ARTICLE 15. CONSUMERS SALES TAX.**

**§11-15-4. Purchaser to pay; accounting by vendor.**

1 The purchaser shall pay to the vendor the amount of tax

2 levied by this article which shall be added to and constitute  
3 a part of the sales price, and shall be collectible as such by  
4 the vendor who shall account to the state for all tax paid by  
5 the purchaser. The vendor shall keep the amount of tax paid  
6 separate from the proceeds of sale exclusive of the tax  
7 unless authorized in writing by the tax commissioner to  
8 keep such amount of tax in a different manner. Where such  
9 authorization is given, the state's claim shall be enforceable  
10 against and shall take precedence over all other claims  
11 against the moneys commingled.

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## CHAPTER 171

(S. B. 110—By Senator Boettner and Senator Holliday)

(Passed March 10, 1984; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-f; to further amend said chapter by adding thereto a new article, designated article thirteen-f; to amend and reenact section eleven, article twenty-four of said chapter; to amend and reenact sections one and two, article two-a, chapter twenty-four of said code; and to further amend said article by adding thereto two new sections, designated sections three and four, all relating to reducing electric and natural gas utility rates for low-income residential customers; business and occupation tax and a credit thereto; corporate net income tax and a credit thereto; providing for special reduced rates for low-income residential customers of gas and electric utilities, except municipal utilities, during certain months of the year; establishing rules for persons qualifying for such special reduced rates and for proving one's eligibility therefor; limiting municipalities as to the amounts relating to the special reduced rates on which local business and occupation or privilege taxes and local public utilities excise taxes can be levied; and prohibiting municipalities from levying such taxes on utilities' recoveries of revenue deficiencies resulting from the special reduced rates.

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

That article thirteen, 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 three-f; that said chapter be further amended by adding thereto a new article, designated article thirteen-f; that section eleven, article twenty-four of said chapter be amended and reenacted; that sections one and two, article two-a, chapter twenty-four of said code be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections three and four, all to read as follows:

#### Chapter

11. Taxation.

24. Public Service Commission.

### CHAPTER 11. TAXATION.

#### Article

13. Business and Occupation Tax.

13F. Business and Occupation Tax Credit for Reducing Electric and Natural Gas Utility Rates for Low-income Residential Customers.

24. Corporation Net Income Tax.

#### ARTICLE 13. BUSINESS AND OCCUPATION TAX.

##### **§11-13-3f. Tax credit for reducing electric and natural gas utility rates for low-income residential customers; regulations.**

1 (a) There shall be allowed as a credit against the tax  
2 imposed by this article, the cost of providing electric or  
3 natural gas utility service, or both, at reduced rates to  
4 qualified low-income residential customers which has not  
5 been reimbursed by any other means.

6 (b) The tax commissioner may prescribe such  
7 regulations as may be necessary to carry out the purposes of  
8 this section, of article thirteen-f of this chapter and of sec-  
9 tion eleven, article twenty-four of this chapter.

#### **ARTICLE 13F. BUSINESS AND OCCUPATION TAX CREDIT FOR REDUCING ELECTRIC AND NATURAL GAS UTILITY RATES FOR LOW-INCOME RESIDENTIAL CUSTOMERS.**

- §11-13F-1. Legislative purpose.  
§11-13F-2. Definitions.  
§11-13F-3. Amount of credit.  
§11-13F-4. When credit may be taken.  
§11-13F-5. Application of credit.

**§11-13F-1. Legislative purpose.**

1 In order to reimburse public utilities for the revenue  
2 deficiencies which they incur in providing special reduced  
3 electric and natural gas utility rates to low-income  
4 residential customers in accordance with the provisions of  
5 article two-a of chapter twenty-four, there is hereby  
6 provided a business and occupation tax credit for reducing  
7 electric and natural gas utility rates for low-income  
8 residential customers.

**§11-13F-2. Definitions.**

1 (a) Any term used in this article shall have the same  
2 meaning as when used in a comparable context in article  
3 thirteen of this chapter, unless a different meaning is  
4 clearly required by the context of its use or by definition in  
5 this article.

6 (b) For purposes of this article, the term:

7 (1) "Eligible taxpayer" means a utility which has  
8 provided electric or natural gas service, or both, to qualified  
9 low-income residential customers at special reduced rates.

10 (2) "Cost of providing electric or natural gas utility  
11 service, or both, at special reduced rates" means the amount  
12 certified by the public service commission under the  
13 provisions of section three, article two-a, chapter twenty-  
14 four of this code as the revenue deficiency incurred by a  
15 public utility in providing special reduced rates for electric  
16 or natural gas utility service as required by section one,  
17 article two-a, chapter twenty-four of this code.

18 (3) "Special reduced rates" means the rates ordered by  
19 the public service commission under the authority of  
20 section one, article two-a, chapter twenty-four of this code.

21 (4) "Qualified low-income residential customers"  
22 means those utility customers eligible to receive electric or

23 natural gas utility service, or both, under special reduced  
24 rates.

**§11-13F-3. Amount of credit.**

1 There shall be allowed to any eligible taxpayer a credit  
2 against the business and occupation taxes imposed by  
3 article thirteen of this chapter, for reducing electric and  
4 natural gas utility rates. The amount of the credit available  
5 to any eligible taxpayer shall be equal to its cost of  
6 providing electric or natural gas service, or both, at special  
7 reduced rates to qualified residential customers, less any  
8 reimbursement of said cost which the taxpayer has received  
9 through any other means.

**§11-13F-4. When credit may be taken.**

1 An eligible taxpayer may claim a credit allowed under  
2 this article against its business and occupation tax liability  
3 for the year in which it receives certification of the amount  
4 of its revenue deficiency from the public service  
5 commission.

6 Notwithstanding the provisions of section four, article  
7 thirteen of this chapter to the contrary, in determining the  
8 amount of estimated business and occupation taxes  
9 reported on any monthly or quarterly estimate of business  
10 and occupation taxes that is due for any portion of the  
11 calendar year prior to the first day of July of such year, no  
12 estimated credit may be claimed or considered.

13 In estimating the amount of monthly or quarterly tax due  
14 for the months of July and succeeding months in any  
15 calendar year, the eligible taxpayer may divide the amount  
16 certified as its revenue deficiency by the public service  
17 commission, by the number of returns (estimated and  
18 annual) that will become due for the period July through  
19 December of each year. The resultant quotient shall be the  
20 maximum amount allowed to be taken as credit on each said  
21 return: *Provided*, That in no event may application of this  
22 credit reduce the tax liability below zero.

**§11-13F-5. Application of credit.**

1 (a) Any unused portion of a credit allowed under this

2 article may be taken as a credit against corporation net  
3 income taxes due for the taxable year, as provided in section  
4 eleven, article twenty-four of this chapter.

5 (b) If any portion of the amount certified as its revenue  
6 deficiency by the public service commission is not  
7 recovered under subsection (a), it may be carried over to the  
8 subsequent year for business and occupation tax purposes  
9 and shall be applied as a credit before any other credits for  
10 that year are applied.

11 (c) In no event shall an eligible taxpayer be allowed to  
12 recover more than one hundred percent of its certified  
13 revenue deficiency.

**ARTICLE 24. CORPORATION NET INCOME TAX.**

**§11-24-11. Credit for reducing electric and natural gas utility rates for low-income residential customers.**

1 (a) *General.*—A credit shall be allowed against the  
2 primary tax liability of an eligible taxpayer under this  
3 article for the cost of providing electric or natural gas utility  
4 service, or both, at special reduced rates to qualified low-  
5 income residential customers which has not been  
6 reimbursed by any other means.

7 (b) *Definitions.*—For purposes of this section, the term:

8 (1) “Eligible taxpayer” means a utility which has  
9 provided electric or natural gas service, or both, to qualified  
10 low-income residential customers at special reduced rates.

11 (2) “Cost of providing electric or natural gas utility  
12 service, or both, at special reduced rates” means the amount  
13 certified by the public service commission under the  
14 provisions of section three, article two-a, chapter twenty-  
15 four of this code, as the revenue deficiency incurred by a  
16 public utility in providing special reduced rates for electric  
17 or natural gas utility service, or both, as required by section  
18 one, article two-a, chapter twenty-four of this code.

19 (3) “Special reduced rates” means the rates ordered by  
20 the public service commission under the authority of  
21 section one, article two-a, chapter twenty-four of this code.

22 (4) "Qualified low-income residential customers"  
23 means those utility customers eligible to receive electric or  
24 natural gas utility service, or both, under special reduced  
25 rates.

26 (c) *Amount of credit.*—The amount of the credit  
27 available to any eligible taxpayer shall be equal to its cost of  
28 providing electric or natural gas service, or both, at special  
29 reduced rates to qualified residential customers, less any  
30 reimbursement of said cost which the taxpayer has received  
31 through any other means.

32 (d) *When credit may be taken.*—An eligible taxpayer  
33 may claim a credit allowed under this section on its annual  
34 return for the taxable year in which it receives certification  
35 of the amount of its revenue deficiency from the public  
36 service commission.

37 Notwithstanding the provisions of section sixteen of this  
38 article to the contrary, no credit may be claimed on any  
39 declaration of estimated tax filed for such taxable year  
40 prior to the first day of July of such taxable year. Such  
41 credit may be claimed on a declaration or amended  
42 declaration filed on or after that date but only if the amount  
43 certified will not be recovered by application of the  
44 business and occupation tax credit allowed by section  
45 three-f, article thirteen of this chapter. In such event, only  
46 that amount not recovered by that credit may be considered  
47 or taken as a credit when estimating the tax due under this  
48 article. In no event may the eligible taxpayer recover more  
49 than one hundred percent of its revenue deficiency as  
50 certified by the public service commission.

51 (e) *Application of credit.*—The credit allowable by this  
52 section for a taxable year is not subject to the fifty percent  
53 limitation specified in section nine of this article.  
54 Notwithstanding the provisions of section four, article  
55 thirteen-f of this chapter, any unused credit may be carried  
56 over and applied against business and occupation taxes in  
57 the manner specified in section five, article thirteen-f of this  
58 chapter.

59 (f) *Copy of certification order.*—A copy of a certification  
60 order from the public service commission shall be attached

61 to any annual return under this article on which a credit  
62 allowed by this section is taken.

## CHAPTER 24. PUBLIC SERVICE COMMISSION.

### ARTICLE 2A. REDUCED RATES FOR LOW-INCOME RESIDENTIAL CUSTOMERS OF ELECTRICITY AND GAS.

- §24-2A-1. Special rates for gas and electric utility customers receiving social security supplemental security income (SSI), aid to families with dependent children (AFDC), aid to families with dependent children—unemployed (AFDC-U), or food stamps.
- §24-2A-2. Recovery of revenue deficiencies.
- §24-2A-3. Limitation on and exemption from local business and occupation or privilege taxes and local public utility excise taxes.
- §24-2A-4. Definitions.

#### §24-2A-1. Special rates for gas and electric utility customers receiving social security supplemental security income (SSI), aid to families with dependent children (AFDC), aid to families with dependent children—unemployed (AFDC-U), or food stamps.

1 The commission shall order each gas and electric utility  
2 subject to its jurisdiction, except municipal or cooperative  
3 gas or electric utilities, to offer special reduced rates  
4 applicable to gas and electric service for the billing months  
5 of December, January, February, March and April of each  
6 year (beginning with the billing month of December, one  
7 thousand nine hundred eighty-three), to residential utility  
8 customers receiving (a) social security supplemental  
9 security income (SSI), (b) aid to families with dependent  
10 children (AFDC), (c) aid to families with dependent  
11 children unemployed (AFDC-U) or (d) food stamps, if  
12 such food stamp recipients are sixty years of age or older.  
13 The special reduced rate offered by each gas and electric  
14 utility to its eligible customers shall be twenty percent less  
15 than the rate which would be applicable to such customers  
16 if they were not receiving any of the four forms of assistance  
17 which confer eligibility for the special reduced rates. A  
18 customer of a utility offering special reduced rates shall be  
19 eligible to receive such rates for each of the billing months  
20 of December, January, February, March and April that  
21 correlates to a calendar month during which that customer



22 is eligible to participate in one or more of the qualifying  
23 programs specified in this section, except as otherwise  
24 provided in this section. The correlation of billing months to  
25 calendar months of eligibility to participate in a qualifying  
26 program is as follows: A December billing month correlates  
27 to the calendar month of November; a January billing  
28 month correlates to the calendar month of December; a  
29 February billing month correlates to the calendar month of  
30 January; a March billing month correlates to the calendar  
31 month of February; and an April billing month correlates to  
32 the calendar month of March. After the billing month of  
33 April, one thousand nine hundred eighty-four, no customer  
34 shall be eligible to receive the special reduced rates until the  
35 billing month in which that customer applies for such rates.  
36 For the billing months of December, one thousand nine  
37 hundred eighty-three, and January, February, March and  
38 April, one thousand nine hundred eighty-four, a customer  
39 shall be eligible to receive a utility's special reduced rates  
40 for any of said billing months which correlates to a calendar  
41 month during which that customer is eligible to participate  
42 in one or more of the qualifying programs specified in this  
43 section, regardless of the date on which that customer  
44 applies for such rates: *Provided*, That the date of  
45 application falls on or prior to the fifteenth day of May, one  
46 thousand nine hundred eighty-four. No customer who  
47 applies for the special reduced rates after the fifteenth day  
48 of May, one thousand nine hundred eighty-four, shall be  
49 eligible to receive such rates for any of the billing months of  
50 December, one thousand nine hundred eighty-three, or  
51 January, February, March or April, one thousand nine  
52 hundred eighty-four. Before any individual may qualify to  
53 receive the special reduced rates, the following  
54 requirements must be met:

55 (a) The special reduced rates shall apply only to current  
56 customers or to those persons who subsequently become  
57 customers in their own right. If an SSI, AFDC, AFDC-U or  
58 food stamp recipient is living in a household which is served  
59 under the name of a person who is not an SSI, AFDC,  
60 AFDC-U or food stamp recipient, that service may not be  
61 changed or have been changed subsequent to the twelfth  
62 day of March, one thousand nine hundred eighty-three, to

63 the name of the SSI, AFDC, AFDC-U or food stamp  
64 recipient in order to qualify for service under the special  
65 reduced rates.

66 (b) The burden of proving eligibility for the special  
67 reduced rates shall be on the customer requesting such  
68 rates. The department of human services shall establish by  
69 rules and regulations procedures (1) to inform persons  
70 receiving any of the four forms of assistance which confer  
71 eligibility for the special reduced rates about the  
72 availability of the special reduced rates, (2) to assist  
73 applicants for the special reduced rates in proving their  
74 eligibility therefor, and (3) to assist gas and electric utilities  
75 offering the special reduced rates in determining on a  
76 continuing basis the eligibility therefor of persons receiving  
77 or applying for such rates. The commission shall establish  
78 by rules and regulations procedures for the application for  
79 and provision of service under the special reduced rates and  
80 for the determination and certification of revenue  
81 deficiencies resulting from the special reduced rates.  
82 Within ten days of the effective date of this article, the  
83 commission and the department of human services shall  
84 adopt temporary rules and regulations, as required by this  
85 section, which rules and regulations shall not be subject to  
86 the requirements of chapter twenty-nine-a and section  
87 seven, article one of chapter twenty-four except that they  
88 shall be filed with the secretary of state and published in the  
89 state register. These temporary rules and regulations shall  
90 remain in effect until supplanted by permanent rules and  
91 regulations, which shall be adopted by the commission and  
92 the department of human services within one hundred  
93 eighty days of the effective date of this article. No customer  
94 who is a recipient of more than one of the four forms of  
95 assistance which confer eligibility for the special reduced  
96 rates shall be eligible for more than one twenty percent  
97 discount for gas service and one twenty percent discount for  
98 electric service during each billing month that said  
99 customer is eligible to receive the special reduced rates.

100 (c) In order to provide each eligible residential utility  
101 customer the special reduced rates for the billing months of  
102 December, one thousand nine hundred eighty-three,

103 through April, one thousand nine hundred eighty-four,  
104 (hereinafter referred to as the first special-reduced-rate  
105 season), each utility providing the special reduced rates  
106 shall credit against the amount otherwise owed by each  
107 such customer an amount equal to the difference between  
108 the total amount that each such customer was actually  
109 billed during the first special-reduced-rate season and the  
110 total amount that each customer would have been entitled  
111 to be billed under the special reduced rates. Each such  
112 credit shall be fully reflected on the first bill issued to each  
113 such customer after approval of each such customer's  
114 application for the special reduced rates, except in cases  
115 where the interval between the approval and the issuance of  
116 the next bill is so short that it is administratively  
117 impracticable to do so, in which cases such credits shall be  
118 fully reflected on the second bill issued to each such  
119 customer after approval of that customer's application. If  
120 the interval between the approval and the issuance of the  
121 next bill is fifteen days or more, it shall not be deemed  
122 administratively impracticable to reflect such credit on the  
123 customer's first such bill.

**§24-2A-2. Recovery of revenue deficiencies.**

1 In order to provide the special reduced rates mandated by  
2 section one of this article and still maintain the integrity of  
3 the earnings of the utilities offering service under these  
4 rates, the commission shall each year, beginning in the year  
5 one thousand nine hundred eighty-four, determine, upon  
6 application by any affected utility, that utility's revenue  
7 deficiency resulting from the special reduced rates. Upon  
8 determining any utility's revenue deficiency, the  
9 commission shall issue an order certifying the amount of  
10 that deficiency. Certified revenue deficiencies shall be  
11 recovered by the affected utilities as follows:

12 (1) A utility's certified revenue deficiency, if any,  
13 resulting from the special reduced rates shall be allowed as  
14 a tax credit against the liability of the utility pursuant to the  
15 provisions of article thirteen-f of chapter eleven.

16 (2) After allowance of a tax credit pursuant to the  
17 provisions of article thirteen-f of chapter eleven, a utility's

18 remaining revenue deficiency, if any, resulting from the  
19 special reduced rates, shall be allowed as a tax credit  
20 against the liability of the utility pursuant to the provisions  
21 of section eleven, article twenty-four of chapter eleven.

**§24-2A-3. Limitation on and exemption from local business  
and occupation or privilege taxes and local public  
utility excise taxes.**

1 (a) Any municipality which presently or hereafter  
2 imposes a business and occupation or privilege tax under  
3 section five, article thirteen of chapter eight or a public  
4 utilities excise tax under section five-a, article thirteen of  
5 chapter eight shall be restricted, in the case of utility  
6 services rendered to a customer under the special reduced  
7 rates, to levying such taxes on (1) in the case of a local  
8 business and occupation or privilege tax, the gross revenues  
9 derived under the special reduced rates for any period  
10 during which that customer receives service under the  
11 special reduced rates, and (2) in the case of a local public  
12 utilities excise tax, to the gross amount of that customer's  
13 utility bill as calculated under the special reduced rates.

14 (b) No recovery of revenue deficiencies provided in  
15 section three of this article shall be subject to tax under  
16 sections five or five-a, article thirteen of chapter eight.

**§24-2A-4. Definitions.**

1 As used in this article, the term:

2 (a) "Billing cycle" shall mean a period of time during  
3 the course of which a utility either bills for or measures, by  
4 meter-reading or any other means, the usage of its utility  
5 services by all of its customers a single time. A utility may  
6 elect whether it wishes to determine its billing cycles by  
7 date of measurement or by date of billing. A utility which  
8 employs twelve billing cycles per year shall be deemed to  
9 employ monthly billing cycles. A utility which employs  
10 more or fewer than twelve billing cycles per year shall be  
11 deemed to employ nonmonthly billing cycles. For a utility  
12 employing monthly billing cycles, a billing cycle identified  
13 by the name of a particular calendar month must include at  
14 least twelve days of that calendar month.

15 (b) "Billing month" shall have two meanings:

16 (1) As applied to a utility employing nonmonthly  
17 billing cycles and to its customers, a particular "billing  
18 month" shall mean the calendar month to which that billing  
19 month correlates under section one of this article.

20 (2) As applied to a utility employing monthly billing  
21 cycles and to its customers, a particular "billing month"  
22 shall mean the period of customer usage reflected on any  
23 bill which, in the case of a utility with billing-date billing  
24 cycles, is issued during that particular monthly billing  
25 cycle, or for which, in the case of a utility with  
26 measurement-date billing cycles, the measurement of usage  
27 is made during that particular monthly billing cycle.

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## CHAPTER 172

(Com. Sub. for H. B. 1686—By Delegate Schifano)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and seven, article fourteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the motor carrier road tax; eliminating requirement that registration card be carried in vehicle; requiring a cross-check to be made by state tax commissioner after issuance by him of identification marker to a motor carrier to aid in determination of any non-compliance by such carrier; and increasing the criminal penalty for failure to obtain or display identification marker issued by the tax commissioner.

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

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

### ARTICLE 14A. MOTOR CARRIER ROAD TAX.

§11-14A-2. Definitions.

§11-14A-7. Identification Markers.

**§11-14A-2. Definitions.**

1 For purposes of this article:

2 (1) "Commissioner" or "tax commissioner" means the tax  
3 commissioner of the state of West Virginia or his duly  
4 authorized agent.

5 (2) "Gallon" means two hundred thirty-one cubic inches  
6 of liquid measurement, by volume: *Provided*, That the com-  
7 missioner may by rule and regulation prescribe other measure-  
8 ment or definition of gallon.

9 (3) "Gasoline" means any product commonly or com-  
10 mercially known as gasoline, regardless of classification, suit-  
11 able for use as fuel in an internal combustion engine, except  
12 special fuel as hereinafter defined.

13 (4) "Highway" means every way or place of whatever  
14 nature open to the use of the public as a matter of right  
15 for the purpose of vehicular travel, which is maintained by  
16 this state or some taxing subdivision or unit thereof or the  
17 federal government or any of its agencies.

18 (5) "Identification marker" means the decal issued by  
19 the commissioner for display upon a particular motor carrier  
20 and authorizing a person to operate or cause to be operated a  
21 motor carrier upon any highway of the state.

22 (6) "Lease" means any oral or written contract for valu-  
23 able consideration granting the use of a motor carrier.

24 (7) "Motor carrier" means any passenger vehicle which has  
25 seats for more than nine passengers in addition to the driver, or  
26 any road tractor, or any tractor truck, or any truck having more  
27 than two axles which is operated or caused to be operated by  
28 any person on any highway in this state.

29 (8) "Operation" means any operation of any motor car-  
30 rier, whether loaded or empty, whether for compensation or  
31 not, and whether owned by or leased to the person who  
32 operates or causes to be operated such motor carrier.

33 (9) "Person" means and includes any individual, firm, part-  
34 nership, limited partnership, joint adventure, association, com-

35 pany, corporation, organization, syndicate, receiver, trust or any  
36 other group or combination acting as a unit, in the plural as well  
37 as the singular number, and means and includes the officers,  
38 directors, trustees or members of any firm, partnership, limited  
39 partnership, joint adventure, association, company, corpora-  
40 tion, organization, syndicate, receiver, trust or any other group  
41 or combination acting as a unit, in the plural as well as the  
42 singular number, unless the intention to give a more limited  
43 meaning is disclosed by the context.

44 (10) "Pool operation" means any operation whereby two or  
45 more taxpayers combine to operate or cause to be operated a  
46 motor carrier or motor carriers upon any highway in this state.

47 (11) "Purchase" means and includes any acquisition of  
48 ownership of property or of a security interest for a con-  
49 sideration.

50 (12) "Road tractor" means every motor carrier designed  
51 and used for drawing other vehicles and not so constructed  
52 as to carry any load thereon either independently or any part  
53 of the weight of a vehicle or load so drawn.

54 (13) "Sale" means any transfer, exchange, gift, barter,  
55 or other disposition of any property or security interest for  
56 a consideration.

57 (14) "Special fuel" means any gas or liquid, other than  
58 gasoline, used or suitable for use as fuel in an internal com-  
59 bustion engine. The term "special fuel" shall include products  
60 commonly known as natural or casinghead gasoline but  
61 shall not include any petroleum product or chemical com-  
62 pound such as alcohol, industrial solvent, heavy furnace oil,  
63 lubricant, etc., not commonly used nor practicably suited for  
64 use as fuel in an internal combustion engine.

65 (15) "Tax" includes, within its meaning, interest, addi-  
66 tions to tax and penalties, unless the intention to give it a more  
67 limited meaning is disclosed by the context.

68 (16) "Taxpayer" means any person liable for any tax,  
69 interest, additions to tax or penalty under the provisions of  
70 this article.

71 (17) "Tractor truck" means every motor carrier designed  
72 and used primarily for drawing other vehicles and not so  
73 constructed as to carry a load other than a part of the weight  
74 of the vehicle and load so drawn.

75 (18) "Truck" means every motor carrier designed, used  
76 or maintained primarily for the transportation of property and  
77 having more than two axles.

**§11-14A-7. Identification markers.**

1 No person shall operate or cause to be operated in this  
2 state any motor carrier subject to this article without first  
3 securing from the commissioner an identification marker  
4 for each such motor carrier. Each identification marker for  
5 a particular motor carrier shall bear a number. The identi-  
6 fication marker shall be displayed on the motor carrier as  
7 required by the commissioner. The commissioner, after issu-  
8 ance of any identification marker to a motor carrier, shall cause  
9 an internal cross-check to be made in his office as to any  
10 state tax which he administers, to in aid in determination  
11 of any noncompliance in respect of failure to file returns  
12 or payment of tax liabilities. The identification markers  
13 herein provided for shall be valid for the period of one year,  
14 ending June thirtieth of each year. A fee of five dollars shall  
15 be paid to the commissioner for issuing each identification  
16 marker. All tax or reports due under this article shall be paid  
17 or reports filed before the issuance of a new identification  
18 marker. Failure by a taxpayer to file the returns or pay the  
19 taxes imposed by this article shall give cause to the commis-  
20 sioner to revoke or refuse to renew the identification marker  
21 previously issued.

22 In an emergency, the commissioner upon request may  
23 authorize, in writing, a motor carrier to be operated without  
24 an identification marker for not more than ten days.

25 Upon conviction for failure to obtain and display the identi-  
26 fication marker on each motor carrier, the person which oper-  
27 ates or causes to be operated said motor carrier shall be fined  
28 not less than fifty nor more than five hundred dollars per day;  
29 and each day of such failure shall constitute a separate of-  
30 fense.



## CHAPTER 173

(Com. Sub. for S. B. 82—By Senator Stacy, Senator Palumbo, Senator Rogers,  
Mr. McGraw, Mr. President, Senator Holmes and Senator Harman)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article twenty-four of said chapter, all relating to updating meaning of terms used in the West Virginia personal income tax act and the West Virginia corporation net income tax act; permitting a decreasing modification under the West Virginia personal income tax act to federal adjusted gross income for amounts included therein under section 86 of the Internal Revenue Code for social security benefits, substituted social security benefits and railroad retirement benefits; and making such changes retroactive to the first day of January, one thousand nine hundred eighty-three.

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

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

### Article

- 21. Personal Income Tax.
- 24. Corporation Net Income Tax.

### ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

§11-21-12. West Virginia adjusted gross income of resident individual.

#### §11-21-9. Meaning of terms.

- 1 Any term used in this article shall have the same meaning
- 2 as when used in a comparable context in the laws of the
- 3 United States relating to income taxes, unless a different
- 4 meaning is clearly required. Any reference in this article to
- 5 the laws of the United States shall mean the provisions of

6 the Internal Revenue Code of 1954, as amended, and such  
7 other provisions of the laws of the United States as relate to  
8 the determination of income for federal income tax  
9 purposes. All amendments made to the laws of the United  
10 States prior to the first day of January, one thousand nine  
11 hundred eighty-four, shall be given effect in determining  
12 the taxes imposed by this article for the tax period  
13 beginning the first day of January, one thousand nine  
14 hundred eighty-three, and thereafter, but no amendment to  
15 the laws of the United States made on or after the first day  
16 of January, one thousand nine hundred eighty-four, shall be  
17 given effect.

**§11-21-12. West Virginia adjusted gross income of resident individual.**

1 (a) *General.*—The West Virginia adjusted gross income  
2 of a resident individual means his federal adjusted gross  
3 income as defined in the laws of the United States for the  
4 taxable year with the modifications specified in this  
5 section.

6 (b) *Modifications increasing federal adjusted gross*  
7 *income.*—There shall be added to federal adjusted gross  
8 income the following items, except that modifications (5),  
9 (6) and (7) shall be required only with respect to tax periods  
10 ending on or after the first day of January, one thousand  
11 nine hundred eighty-two:

12 (1) Interest income on obligations of any state other  
13 than this state, or of a political subdivision of any such other  
14 state unless created by compact or agreement to which this  
15 state is a party;

16 (2) Interest or dividend income on obligations or  
17 securities of any authority, commission or instrumentality  
18 of the United States, which the laws of the United States  
19 exempt from federal income tax but not from state income  
20 taxes;

21 (3) Income taxes imposed by this state or any other  
22 taxing jurisdiction, to the extent deductible in determining  
23 federal adjusted gross income and not credited against  
24 federal income tax;

25 (4) Interest on indebtedness incurred or continued to  
26 purchase or carry obligations or securities the income from  
27 which is exempt from tax under this article, to the extent  
28 deductible in determining federal adjusted gross income;

29 (5) Interest on a depository institution tax-exempt  
30 savings certificate which is allowed as an exclusion from  
31 federal gross income under section 128 of the Internal  
32 Revenue Code, for the federal taxable year;

33 (6) The amount allowed as a deduction from federal  
34 gross income under section 221 of the Internal Revenue  
35 Code by married couples who file a joint federal return for  
36 the federal taxable year; and

37 (7) The deferral value of certain income that is not  
38 recognized for federal tax purposes, which value shall be an  
39 amount equal to a percentage of the amount allowed as a  
40 deduction in determining federal adjusted gross income  
41 pursuant to the accelerated cost recovery system under  
42 section 168 of the Internal Revenue Code for the federal  
43 taxable year, with the percentage of the federal deduction  
44 to be added as follows with respect to the following  
45 recovery property: three-year property—no modification;  
46 five-year property—ten percent; ten-year property—  
47 fifteen percent; fifteen-year public utility property—  
48 twenty-five percent; and fifteen-year real property—  
49 thirty-five percent: *Provided*, That this modification shall  
50 not apply to any person whose federal deduction is  
51 determined by the use of the straight line method.

52 (c) *Modifications reducing federal adjusted gross*  
53 *income.*—There shall be subtracted from federal adjusted  
54 gross income:

55 (1) Interest income on obligations of the United States  
56 and its possessions to the extent includible in gross income  
57 for federal income tax purposes;

58 (2) Interest or dividend income on obligations or  
59 securities of any authority, commission or instrumentality  
60 of the United States to the extent includible in gross income  
61 for federal income tax purposes but exempt from state  
62 income taxes under the laws of the United States;

63 (3) Any gain from the sale or other disposition of  
64 property having a higher fair market value on the first day  
65 of January, one thousand nine hundred sixty-one, than the  
66 adjusted basis at said date for federal income tax purposes:  
67 *Provided*, That the amount of this adjustment is limited to  
68 that portion of any such gain which does not exceed the  
69 difference between such fair market value and such  
70 adjusted basis: *Provided, however*, That if such gain is  
71 considered a long-term capital gain for federal income tax  
72 purposes, the modification shall be limited to forty percent  
73 of such portion of the gain;

74 (4) The amount of any refund or credit for overpayment  
75 of income taxes imposed by this state, or any other taxing  
76 jurisdiction, to the extent properly included in gross income  
77 for federal income tax purposes;

78 (5) Annuities, retirement allowances, returns of  
79 contributions and any other benefit received under the  
80 public employees retirement system, the department of  
81 public safety death, disability and retirement fund, the  
82 state teachers retirement system, and all forms of military  
83 retirement, including regular armed forces, reserves and  
84 national guard, including any survivorship annuities  
85 derived therefrom, to the extent includible in gross income  
86 for federal income tax purposes;

87 (6) Retirement income received in the form of pensions  
88 and annuities after the thirty-first day of December, one  
89 thousand nine hundred seventy-nine, under any police or  
90 firemen's retirement system, including any survivorship  
91 annuities derived therefrom, to the extent includible in  
92 gross income for federal income tax purposes;

93 (7) Federal adjusted gross income in the amount of eight  
94 thousand dollars received from any source after the thirty-  
95 first day of December, one thousand nine hundred seventy-  
96 nine, by any person who has attained the age of sixty-five on  
97 or before the last day of the taxable year, or by any person  
98 certified by proper authority as permanently and totally  
99 disabled, regardless of age, on or before the last day of the  
100 taxable year, to the extent includible in federal adjusted  
101 gross income for federal tax purposes: *Provided*, That if a

102 person has a medical certification from a prior year and he  
103 is still permanently and totally disabled, a copy of the  
104 original certificate is acceptable as proof of disability. A  
105 copy of the form filed for the federal disability income tax  
106 exclusion is acceptable: *Provided, however, That*

107 (i) Where the total modification under subdivisions (1),  
108 (2), (5) and (6) of this subsection is eight thousand dollars  
109 per person or more, no deduction shall be allowed under  
110 this subdivision, and

111 (ii) Where the total modification under subdivisions (1),  
112 (2), (5) and (6) of this subsection is less than eight thousand  
113 dollars per person, the total modification allowed under  
114 this subdivision for all gross income received by such  
115 person shall be limited to the difference between eight  
116 thousand dollars and the sum of modifications under such  
117 subdivisions;

118 (8) Federal adjusted gross income in the amount of eight  
119 thousand dollars received from any source after the thirty-  
120 first day of December, one thousand nine hundred seventy-  
121 nine, by the surviving spouse of any person who had  
122 attained the age of sixty-five or who had been certified as  
123 permanently and totally disabled, to the extent includible  
124 in federal adjusted gross income for federal tax purposes:  
125 *Provided, That*

126 (i) Where the total modification under subdivisions (1),  
127 (2), (5), (6) and (7) of this subsection is eight thousand  
128 dollars or more, no deduction shall be allowed under this  
129 subdivision, and

130 (ii) Where the total modification under subdivisions (1),  
131 (2), (5), (6) and (7) of this subsection is less than eight  
132 thousand dollars per person, the total modification allowed  
133 under this subdivision for all gross income received by such  
134 person shall be limited to the difference between eight  
135 thousand dollars and the sum of such subdivisions;

136 (9) Any pay or allowances received, after the thirty-first  
137 day of December, one thousand nine hundred seventy-nine,  
138 by West Virginia residents who have not attained the age of  
139 sixty-five, as compensation for active service in the armed

140 forces of the United States: *Provided*, That such deduction  
141 shall be limited to an amount not to exceed four thousand  
142 dollars; and

143 (10) Gross income to the extent included in federal  
144 adjusted gross income under section 86 of the Internal  
145 Revenue Code for federal income tax purposes.

146 (d) *Modification for West Virginia fiduciary*  
147 *adjustment*.—There shall be added to or subtracted from  
148 federal adjusted gross income, as the case may be, the  
149 taxpayer's share, as beneficiary of an estate or trust, of the  
150 West Virginia fiduciary adjustment determined under  
151 section nineteen of this article.

152 (e) *Partners*.—The amounts of modifications required  
153 to be made under this section by a partner, which relate to  
154 items of income, gain, loss or deduction of a partnership,  
155 shall be determined under section seventeen of this article.

156 (f) *Husband and wife*.—If husband and wife determine  
157 their federal income tax on a joint return but determine  
158 their West Virginia income taxes separately, they shall  
159 determine their West Virginia adjusted gross incomes  
160 separately as if their federal adjusted gross incomes had  
161 been determined separately.

#### ARTICLE 24. CORPORATION NET INCOME TAX.

##### §11-24-3. Meaning of terms.

1 (a) *General*.—Any term used in this article shall have  
2 the same meaning as when used in a comparable context in  
3 the laws of the United States relating to federal income  
4 taxes, unless a different meaning is clearly required by the  
5 context or by definition in this article. Any reference in this  
6 article to the laws of the United States or to the Internal  
7 Revenue Code or to the federal income tax law shall mean  
8 the provisions of the laws of the United States as relate to  
9 the determination of income for federal income tax  
10 purposes. All amendments made to the laws of the United  
11 States prior to the first day of January, one thousand nine  
12 hundred eighty-four, shall be given effect in determining  
13 the taxes imposed by this article for the tax period

14 beginning the first day of January, one thousand nine  
15 hundred eighty-three, and thereafter, but no amendment to  
16 laws of the United States made on or after the first day of  
17 January, one thousand nine hundred eighty-four, shall be  
18 given effect.

19 (b) *Certain terms defined.*—For purposes of this article:

20 (1) The term “tax commissioner” means the tax  
21 commissioner of the state of West Virginia or his delegate.

22 (2) The term “corporation” means and includes a joint-  
23 stock company or any association which is taxable as a  
24 corporation under the federal income tax law.

25 (3) The term “domestic corporation” means any  
26 corporation organized under the laws of West Virginia.

27 (4) The term “foreign corporation” means any  
28 corporation other than a domestic corporation.

29 (5) The term “state” means any state of the United  
30 States, the District of Columbia, the Commonwealth of  
31 Puerto Rico, any territory or possession of the United  
32 States, and any foreign country or political subdivision  
33 thereof.

34 (6) The term “taxable year” means the taxable year for  
35 which the taxable income of the taxpayer is computed  
36 under the federal income tax law.

37 (7) The term “taxpayer” means a corporation subject to  
38 the tax imposed by this article.

39 (8) The term “tax” includes, within its meaning, interest  
40 and penalties, unless the intention to give it a more limited  
41 meaning is disclosed by the context.

42 (9) The term “commercial domicile” means the  
43 principal place from which the trade or business of the  
44 taxpayer is directed or managed.

45 (10) The term “compensation” means wages, salaries,  
46 commissions and any form of remuneration paid to  
47 employees for personal services.

48 (11) The term "West Virginia taxable income" means  
49 the taxable income of a corporation as defined by the laws  
50 of the United States for federal income tax purposes,  
51 adjusted as provided in section six of this article: *Provided*,  
52 That in the case of a corporation having income from  
53 business activity which is taxable without this state, its  
54 "West Virginia taxable income" shall be such portion of its  
55 taxable income as so defined and adjusted as is allocated or  
56 apportioned to this state under the provisions of section  
57 seven of this article.

58 (12) The term "business income" means income arising  
59 from transactions and activity in the regular course of the  
60 taxpayer's trade or business and includes income from  
61 tangible and intangible property if the acquisition and  
62 disposition of the property constitute integral parts of the  
63 taxpayer's regular trade or business operations.

64 (13) The term "nonbusiness income" means all income  
65 other than business income.

66 (14) The term "public utility" means any business  
67 activity to which the jurisdiction of the public service  
68 commission of West Virginia extends under section one,  
69 article two, chapter twenty-four of the code of West  
70 Virginia.

71 (15) The term "this code" means the code of West  
72 Virginia, one thousand nine hundred thirty-one, as  
73 amended.

74 (16) The term "this state" means the state of West  
75 Virginia.

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## CHAPTER 174

(S. B. 311—By Senator Spears and Senator Tonkovich)

[Passed March 10, 1984; in effect July 1, 1984. Approved by the Governor.]

AN ACT to amend article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-



one, as amended, by adding thereto a new section, designated section forty-two; to amend article twenty-four of said chapter by adding thereto a new section, designated section twelve; and to amend chapter twenty-one-a of said code by adding thereto a new article, designated article two-c, all relating to the establishment of an economically disadvantaged veterans incentive program; the intent and purpose of the Legislature; definitions; providing a tax credit for employers who employ certain veterans for a certain period of time; specifying the nature and amount of the tax credit; setting forth restrictions and limitations on eligibility for the tax credit; providing for program administration by the division of employment service of the department of employment security; providing for the tax credit to be applied to either personal income or corporate net income tax liability; and requiring the state tax commissioner to provide by rule or regulation for the filing of claims for the tax credit established herein.

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

That article twenty-one, 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 forty-two; that article twenty-four of said chapter be amended by adding thereto a new section, designated section twelve; and that chapter twenty-one-a of said code be amended by adding thereto a new article, designated article two-c, all to read as follows:

**Chapter**

**11. Taxation.**

**21A. Unemployment Compensation.**

**CHAPTER 11. TAXATION.**

**Article**

**21. Personal Income Tax.**

**24. Corporation Net Income Tax.**

**ARTICLE 21. PERSONAL INCOME TAX.**

**§11-21-42. Veterans incentive tax credit.**

1 Every employer entitled to receive a tax credit against

2 his West Virginia personal income tax liability as pro-  
3 vided in article two-c, chapter twenty-one-a of this code  
4 shall receive the credit for the period and in the amount  
5 specified in said article two-c. The state tax commis-  
6 sioner shall provide by appropriate rule or regulation for  
7 the reporting, filing and application of claims of the tax  
8 credit provided for in a manner in conformity with the  
9 legislative purpose as declared in section two, article  
10 two-c, chapter twenty-one-a of this code.

#### **ARTICLE 24. CORPORATION NET INCOME TAX.**

##### **§11-24-12. Veterans incentive tax credit.**

1 Every employer entitled to receive a tax credit against  
2 its West Virginia corporate net income tax liability as  
3 provided in article two-c, chapter twenty-one-a of this  
4 code, shall receive the credit for the period and in the  
5 amount specified in said article two-c of this chapter.  
6 The state tax commissioner shall provide by appropriate  
7 rule or regulation for the reporting, filing and application  
8 of claims for the tax credit provided for in a manner in  
9 conformity with the legislative purpose as declared in  
10 section two, article two-c, chapter twenty-one-a of this  
11 code.

#### **CHAPTER 21A. UNEMPLOYMENT COMPENSATION.**

##### **ARTICLE 2C. VETERANS INCENTIVE PROGRAM.**

§21A-2C-1. Short title.

§21A-2C-2. Declaration of legislative intent and purpose.

§21A-2C-3. Definitions.

§21A-2C-4. Tax credit; eligibility; amount.

§21A-2C-5. Restrictions and limitations regarding tax credit.

§21A-2C-6. Program administration.

##### **§21A-2C-1. Short title.**

1 This article shall be known and may be cited as the  
2 "Veterans Incentive Program Act of 1984."

##### **§21A-2C-2. Declaration of legislative intent and purpose.**

1 The Legislature of West Virginia hereby recognizes  
2 that disabled veterans and economically disadvantaged  
3 veterans of the Vietnam era and of the Korean conflict

4 have made sacrifices which merit preferential employ-  
5 ment treatment in both the public and private sectors.  
6 Economically disadvantaged and disabled veterans tradi-  
7 tionally suffer a disproportionately higher unemployment  
8 rate than that of nonveterans of similar age and skills.  
9 It is the intent and purpose of the Legislature to en-  
10 courage the employment of these veterans in the private  
11 sector by providing tax credits for private sector em-  
12 ployers who employ economically disadvantaged Vietnam  
13 era and Korean conflict veterans, and disabled veterans  
14 generally.

### §21A-2C-3. Definitions.

1 For the purposes of this article:

2 (a) "Active duty" means full-time duty in the armed  
3 forces, other than duty for training in the reserves or  
4 national guard. Any period of duty for training in the  
5 reserves or national guard, including authorized travel,  
6 during which an individual was disabled from a disease  
7 or injury incurred or aggravated in line of duty, is con-  
8 sidered "active duty."

9 (b) "Economically disadvantaged" means a person  
10 who:

11 (1) Receives, or is a member of a family which receives,  
12 cash welfare payments under a federal, state or local  
13 welfare program;

14 (2) Has, or is a member of a family which has, received  
15 a total family income for the six months prior to applica-  
16 tion which, in relation to family size, was not in excess  
17 of the higher of

18 (i) The poverty level determined in accordance with  
19 criteria established by the federal office of management  
20 and budget; or

21 (ii) Seventy percent of the lower living standard in-  
22 come level;

23 (3) Is receiving food stamps pursuant to the food  
24 stamp act of one thousand nine hundred seventy-seven;

25 (4) Is a foster child on behalf of whom state or local  
26 government payments are made; or

27 (5) Is an adult handicapped individual whose own  
28 income meets the requirements of subdivisions (1) and  
29 (2) of this section, but who is a member of a family  
30 whose income does not meet such requirements.

31 (c) "Korean conflict veteran" means a person who  
32 served in the armed services of the United States at  
33 least one day during the period of time beginning the  
34 twenty-seventh day of June, one thousand nine hundred  
35 fifty, and extending through the thirty-first day of Jan-  
36 uary, one thousand nine hundred fifty-five.

37 (d) "Veteran" means a member of the United States  
38 armed forces who:

39 (1) Served on active duty for a period of more than  
40 one hundred eighty days and was discharged or released  
41 therefrom with other than a dishonorable discharge; or

42 (2) Was discharged or released from active duty be-  
43 cause of a service-connected disability.

44 (e) "Vietnam era veteran" means a person who served  
45 in the armed services of the United States at least one  
46 day during the period of time beginning the fifth day of  
47 August, one thousand nine hundred sixty-four, and ex-  
48 tending through the seventh day of May, one thousand  
49 nine hundred seventy-five.

#### §21A-2C-4. Tax credit; eligibility; amount.

1 (a) Each person, partnership or corporation which  
2 employs an economically disadvantaged Vietnam era  
3 or Korean conflict veteran or a disabled veteran for a  
4 continuous period of one year, except as otherwise pro-  
5 vided in this article, shall be entitled to an appropriate  
6 tax credit for each such veteran so employed. In the case  
7 of a person or partnership so employing a veteran, the  
8 tax credit provided for in this section shall be applied  
9 against the employer's personal income tax liability. In  
10 the case of a corporation so employing a veteran, the tax  
11 credit provided for in this section shall be applied against

12 the corporation's corporate net income tax liability. This  
13 tax credit shall be nonassignable and may not exceed  
14 an employer's total tax liability with respect to the specific  
15 tax against which the tax credit is required to be applied.

16 (b) The amount of the tax credit allowed under sub-  
17 section (a) of this section shall be an amount equal to  
18 the following:

19 (1) For each economically disadvantaged Vietnam  
20 era or Korean conflict veteran employed as described in  
21 subsection (a), the amount of the tax credit allowed  
22 shall be thirty percent of the employee's wage base. For  
23 the purposes of this section, the employee's wage base  
24 is the first two thousand dollars in wages or compensa-  
25 tion actually paid to the employee by the employer; and

26 (2) For each disabled veteran employed as described  
27 in subsection (a), the amount of the tax credit allowed  
28 shall be a percentage equal to the percentage of dis-  
29 ability suffered by the veteran multiplied by the em-  
30 ployee's wage base. The employee's wage base is the  
31 same as provided in subdivision (1) of this subsection.  
32 The percentage of disability referred to in this subdivi-  
33 sion means the percentage of compensation for service-  
34 connected disability as determined by the veterans ad-  
35 ministration of the United States.

**§21A-2C-5. Restrictions and limitations regarding tax credit.**

1 (a) An employer may not claim a tax credit provided  
2 for in this article for any veteran employed for less than  
3 a continuous period of one year, unless:

4 (1) The veteran voluntarily leaves employment with  
5 the employer;

6 (2) The veteran becomes totally disabled and unable  
7 to continue his employment; or

8 (3) The veteran is terminated for good cause shown.

9 In the event that the veteran is employed for less  
10 than a one-continuous-year period due to circumstances  
11 enumerated in subdivision (1), (2) or (3) above, the

12 employer shall be entitled to a partial tax credit in a  
13 proportional amount corresponding to the ratio of the  
14 time period during which the veteran was actually em-  
15 ployed to the one-year period required for a full tax  
16 credit multiplied by the amount of the full tax which  
17 would have accrued to the employer had the veteran's  
18 employment continued for a full year.

19 (b) An employer may not claim tax credit provided  
20 for in this article for any veteran who is employed and  
21 displaces a person already employed. In addition, no  
22 tax credit may be claimed for the employment of any  
23 veteran for whom the employer is receiving job train-  
24 ing payments from either the federal or state govern-  
25 ment. Nothing in this section prohibits an employer  
26 from receiving tax credits from both the federal and  
27 state governments under similar targeted jobs programs  
28 if the employer is otherwise qualified to receive both.

**§21A-2C-6. Program administration.**

1 The program established by this article shall be con-  
2 ducted primarily under the direction of the division of  
3 employment service of the department of employment  
4 security. Each veteran who qualifies under this article  
5 for participation in this program shall be given, upon  
6 request, a voucher from a local employment service  
7 office certifying that the veteran is eligible for partici-  
8 pation in the program described in this article. The  
9 voucher shall be in a form prescribed by the commis-  
10 sioner of employment security and the commissioner  
11 may conduct such investigations and collect such data  
12 as he deems necessary to ensure that each veteran apply-  
13 ing for the voucher is actually qualified for participation  
14 in the program.

15 When an employer employs a veteran who presents the  
16 voucher herein provided for, the employer shall submit  
17 the voucher along with basic information to the depart-  
18 ment of employment security as may be required for  
19 participation in this program. Each year, the commis-  
20 sioner of the department of employment security shall  
21 certify to the state tax commissioner a list of employers

22 who may be qualified to receive a tax credit under this  
23 program. In order to receive the appropriate tax credit,  
24 an employer must file for the tax credit provided for  
25 under this article as required by section forty-two, article  
26 twenty-one, chapter eleven of this code or by section  
27 twelve, article twenty-four, chapter eleven of this code.

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## CHAPTER 175

(H. B. 1448—By Delegate Hagedorn)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventy-one, article twenty-one, chapter eleven of the code of West Virginia. one thousand nine hundred thirty-one, as amended, relating to the withholding of personal income tax; exemptions; withholding of tax due on certain annuity benefits.

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

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

### ARTICLE 21. PERSONAL INCOME TAX.

#### PART V. WITHHOLDING OF TAX.

##### §11-21-71. Requirement of withholding tax from wages.

1 (a) *General.*—Every employer maintaining an office or  
2 transacting business within this state and making payment of  
3 any wage taxable under this article to a resident or nonresi-  
4 dent individual shall deduct and withhold from such wages  
5 for each payroll period a tax computed in such manner as  
6 to result, so far as practicable, in withholding from the  
7 employee's wages during each calendar year an amount sub-  
8 stantially equivalent to the tax reasonably estimated to be  
9 due under this article resulting from the inclusion in the  
10 employee's West Virginia adjusted gross income of his wages  
11 received during such calendar year. The method of deter-

12 mining the amount to be withheld shall be prescribed by the  
13 tax commissioner, with due regard to the West Virginia with-  
14 holding exemption of the employee. This section shall not  
15 apply to payments by the United States for service in the  
16 armed forces of the United States.

17 (b) *Withholding exemptions.*—For purposes of this sec-  
18 tion:

19 (1) An employee shall be entitled to the same number of  
20 West Virginia withholding exemptions as the number of with-  
21 holding exemptions to which he is entitled for federal income  
22 tax withholding purposes. An employer may rely upon the  
23 number of federal withholding exemptions claimed by the  
24 employee, except where the employee claims a higher number  
25 of West Virginia withholding exemptions.

26 (2) With respect to any taxable year prior to the first  
27 day of January, one thousand nine hundred eighty-three, the  
28 amount of each West Virginia exemption shall be six hundred  
29 dollars whether the individual is a resident or nonresident.  
30 With respect to any taxable year beginning on or after the  
31 first day of January, one thousand nine hundred eighty-three,  
32 and prior to the first day of January, one thousand nine  
33 hundred eighty-four, said exemption shall be seven hundred  
34 dollars and with respect to any taxable year beginning on or  
35 after the first day of January, one thousand nine hundred  
36 eighty-four, said exemption shall be eight hundred dollars.

37 (c) *Exception for certain nonresidents.*—If the income tax  
38 law of another state of the United States or of the District  
39 of Columbia results in its residents being allowed a credit  
40 under section forty sufficient to offset all taxes required by  
41 this article to be withheld from the wages of an employee,  
42 the tax commissioner may by regulation relieve the employers  
43 of such employees from the withholding requirements of this  
44 article with respect to such employees.

45 (d) *Federal annuities and benefits.*—The commissioner is  
46 hereby authorized to enter into any agreement or agree-  
47 ments with the federal office of personnel management  
48 or any other agency of the United States that are  
49 necessary to effectuate the withholding of tax due under the



50 provisions of this article upon taxable income received by  
51 residents of this state under any annuity or benefit program  
52 of the United States.

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## CHAPTER 176

(Com. Sub. for S. B. 206—By Senator Heck, Senator Nelson,  
Senator Chace and Senator Boettner)

[Passed March 10, 1984; in effect ninety days 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-three; and to amend and reenact section nine, article three, chapter five-a of said code, all relating to the creation of a commission on mass transportation; legislative findings; creation of the commission; the method of appointment; terms of members and vacancies; expenses of commission members; office space; officers; meetings; oaths of office; powers and duties; reports to governor and joint committee on government and finance; intergovernmental cooperation; duties of urban mass transit authorities; construction and severability; commission termination; and making available to local governmental units and to transit authorities the services of the department of finance and administration.

*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-three; and that section nine, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

### Chapter

5. **General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**
- 5A. **Department of Finance and Administration.**

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.**

**ARTICLE 23. COMMISSION ON MASS TRANSPORTATION.**

- §5-23-1. Legislative findings and purposes.
- §5-23-2. Creation of commission; composition; appointment of members.
- §5-23-3. Terms of citizen representative members; vacancies.
- §5-23-4. Expenses of commission members.
- §5-23-5. Office space; officers; meetings.
- §5-23-6. Oaths of office.
- §5-23-7. Commission powers.
- §5-23-8. Reports to governor and joint committee on government and finance.
- §5-23-9. Intergovernmental cooperation.
- §5-23-10. Duties of urban mass transit authorities.
- §5-23-11. Construction; severability.
- §5-23-12. Commission termination.

**§5-23-1. Legislative findings and purposes.**

- 1 The Legislature finds:
  - 2 (a) That throughout the state, in both urban and rural  
3 areas, there exists a need for a coordinated system of mass  
4 transportation in order to enable many segments of the  
5 population and particularly the aged, physically  
6 handicapped and economically disadvantaged, to get to and  
7 from work, medical and hospital facilities, shopping areas,  
8 recreational facilities, churches and other institutions  
9 which are essential to their health, safety and economic  
10 well-being;
  - 11 (b) That in certain urban and rural areas of the state,  
12 mass transportation authorities have been created  
13 pursuant to article twenty-seven, chapter eight of this code  
14 which now operate publicly owned mass transportation  
15 systems serving limited regions or communities;
  - 16 (c) That in many urban and rural areas of the state, there  
17 exist no systems of mass transportation, either public or  
18 private, to meet the needs of the people;
  - 19 (d) That while financial assistance is available to  
20 certain areas of the state from the federal government, these

21 resources are uncertain and insufficient to adequately meet  
22 the perceived needs of the people; and

23 (e) That given the limited financial resources of the  
24 state, it is necessary and desirable to create an agency  
25 within state government, the functions of which shall be to  
26 actively study, investigate, consider, evaluate and  
27 recommend to the governor and to the Legislature from  
28 time to time ways and means whereby mass transportation  
29 of all types can be supported, improved, created and  
30 otherwise assisted, and to formulate plans and specific  
31 proposals for future executive and legislative consideration  
32 with respect to a state policy and program on mass  
33 transportation which will involve the cooperation of  
34 existing urban mass transportation authorities and other  
35 providers, both public and private.

**§5-23-2. Creation of commission; composition; appointment of members.**

1 The West Virginia commission on mass transportation is  
2 hereby created. The commission shall consist of thirteen  
3 members as follows: Three members, herein referred to as  
4 government representatives, who shall be the commissioner  
5 of finance and administration, the director of the  
6 department of health and the executive director of the  
7 commission on aging; and ten additional citizens of the  
8 state, herein referred to as citizen representatives, no more  
9 than five of whom shall belong to the same political party.  
10 The governor shall appoint the ten citizen representative  
11 members of the commission with the advice and consent of  
12 the Senate, at least two of whom shall be selected from the  
13 boards of members of urban mass transit authorities  
14 formed pursuant to article twenty-seven, chapter eight of  
15 this code, two of whom shall be from boards of members  
16 from rural transportation authorities existing throughout  
17 the state, two of whom shall be senior citizens, one disabled  
18 person, one from organized labor and two from the public at  
19 large. The director of the division of public transportation  
20 within the department of finance and administration shall  
21 be an ex officio member of the commission.

**§5-23-3. Terms of citizen representative members; vacancies.**

1 On or before the first day of July, one thousand nine

2 hundred eighty-four, the governor shall appoint the ten  
3 citizen representatives of the commission for the following  
4 durations: Four members for terms of two years, three  
5 members for terms of four years and three members for  
6 terms of six years. The successor of each such appointed  
7 member shall be appointed for a term of six years in the  
8 same manner as the original appointments were made,  
9 except that any person appointed by the governor to fill a  
10 vacancy occurring prior to the expiration of the term for  
11 which his predecessor was appointed shall be appointed  
12 only for the remainder of such term. Each commission  
13 member shall serve until the appointment and qualification  
14 of his successor.

**§5-23-4. Expenses of commission members.**

1 Each citizen representative of the commission shall be  
2 reimbursed for all reasonable and necessary expenses  
3 actually incurred in the performance of his duties as a  
4 member of the commission. Requisition for such expenses  
5 shall be accompanied by a sworn and itemized statement  
6 which shall be filed with the auditor.

**§5-23-5. Office space; officers; meetings.**

1 The commission shall be supplied with necessary office  
2 space at the seat of government. A majority of the members  
3 of the commission shall constitute a quorum for the  
4 transaction of its business. The governor shall appoint,  
5 from among the citizen representatives, a chairman of the  
6 commission. The commission shall then elect such other  
7 officers as it deems appropriate for the conduct of its  
8 business. The commission shall hold four regular meetings a  
9 year as follows: On the first Monday in January, April, July  
10 and October. Special meetings may be convened on the call  
11 of the chairman, the governor or a majority of the members.  
12 A majority of the commission members present at a meeting  
13 shall be required to determine any issues brought before it.

**§5-23-6. Oaths of office.**

1 Citizen representatives of the commission shall take and  
2 subscribe to the constitutional oath before entering upon  
3 their duties. Their oaths shall be filed with the secretary of  
4 state.

**§5-23-7. Commission powers.**

- 1 The commission is hereby authorized and empowered to:
- 2 (a) Study and consider the entire field of legislation and  
3 administration concerning mass transportation throughout  
4 the state;
- 5 (b) Identify the needs for mass transportation and  
6 resources available throughout every area of the state;
- 7 (c) Develop plans for:
  - 8 (1) Distributing state vehicles and state resources,  
9 giving highest priority to those regions or areas of regions  
10 which have inadequate existing mass transportation;
  - 11 (2) Determining the appropriate eligibility criteria for  
12 state assistance to persons over age sixty or physically  
13 handicapped who are unable otherwise to secure adequate  
14 transportation for the necessities of life; and
  - 15 (3) Determining on what basis, if any, persons over age  
16 sixty or physically handicapped shall be required to  
17 contribute for the state services provided hereunder.
- 18 (d) Advise and make recommendations to the governor  
19 and to the Legislature relative to the needs of mass  
20 transportation throughout the state;
- 21 (e) Solicit and accept funds, services and materials from  
22 any state entity or agency or from any private sources;
- 23 (f) Distribute, transfer or expend state funds for the  
24 purchase, repair, maintenance and operation of  
25 transportation vehicles;
- 26 (g) Cooperate and work with federal, state and local  
27 governmental officers, units, transportation authorities,  
28 activities and agencies in the promotion and attainment of  
29 the goals of the commission; and
- 30 (h) Promulgate rules and regulations, according to the  
31 provisions of chapter twenty-nine-a of this code, necessary  
32 to effectuate the purposes and duties provided herein.

**§5-23-8. Reports to governor and joint committee on government and finance.**

1 The commission shall, annually, submit to the governor  
2 and to the joint committee on government and finance of the  
3 Legislature a report of its activities, projects and  
4 accomplishments to the date of such report and of its  
5 planned future activities and projects.

**§5-23-9. Intergovernmental cooperation.**

1 The commission is further authorized and directed to  
2 utilize the resources of the department of finance and  
3 administration and to seek assistance from other state and  
4 local government agencies including the commission on  
5 aging and urban mass transportation authorities formed  
6 pursuant to article twenty-seven, chapter eight of this code,  
7 to aid in carrying out its duties.

**§5-23-10. Duties of urban mass transit authorities.**

1 Each urban mass transit authority formed pursuant to  
2 article twenty-seven, chapter eight of this code, existing or  
3 hereafter created in the state, shall cooperate with the  
4 commission in developing the plans and studies required by  
5 this article.

**§5-23-11. Construction; severability.**

1 The provisions of this article shall be liberally construed  
2 to accomplish its objectives and purposes. If any section,  
3 subsection, subdivision, subparagraph, sentence or clause  
4 of this article is judged to be unconstitutional or invalid,  
5 such invalidity or unconstitutionality shall not affect the  
6 validity of the remaining portions of this article and, to this  
7 end, the provisions of this article are hereby declared to be  
8 severable.

**§5-23-12. Commission termination.**

1 This commission shall be terminated on the first day of  
2 July, one thousand nine hundred eighty-six, unless review  
3 of its functions shall be undertaken pursuant to the  
4 provisions of sections nine, ten and eleven, article ten,  
5 chapter four of this code.

**CHAPTER 5A. DEPARTMENT OF FINANCE AND  
ADMINISTRATION.****ARTICLE 3. PURCHASING DIVISION.****§5A-3-9. Facilities of department available to local  
governmental bodies.**

1 The director shall make available the facilities and  
2 services of his department to counties; county schools;  
3 municipalities; urban mass transportation authorities  
4 created pursuant to article twenty-seven, chapter eight of  
5 this code; mass transportation divisions of county and  
6 municipal governments; and other local governmental  
7 bodies within this state. The actual expenses incurred  
8 thereby shall be paid by the local governmental body.

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**CHAPTER 177**

(Com. Sub. for H. B. 1123—By Delegate Hatcher)

[Passed March 8, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article eight, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the disposition of unclaimed miscellaneous personal property; exceptions; prohibiting banking or financial organizations or institutions from charging or contracting to charge fees against inactive or dormant interest bearing or time deposits.

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

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

**ARTICLE 8. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY  
ACT.****§36-8-9. Miscellaneous personal property held for another person; exception; prohibiting the levying of charges on inactive savings accounts.**

1 All personal property not otherwise covered by this article,

2 including any income or increment thereon and after deducting  
3 any lawful charges, that is held or owing in this state in the  
4 ordinary course of the holder's business and has remained  
5 unclaimed by the owner for more than seven years after it  
6 became payable or distributable is presumed abandoned: *Pro-*  
7 *vided*, That this section shall not apply to such property held  
8 or owing by a utility prior to one thousand nine hundred  
9 fifty-seven: *Provided, however*, That notwithstanding the pro-  
10 visions of section two of this article, no banking or other  
11 financial organization or institution shall, after the effective  
12 date of this section, demand, collect, charge or contract to  
13 receive any charge due to dormancy or inactivity on any in-  
14 terest bearing savings or time deposit for any period of time  
15 prior to the withdrawal of such funds by the depositor, his  
16 personal agent or representative, or the accrual under this  
17 article of the right of the state to deposit or sell as abandoned  
18 property any such deposit. For purposes of this proviso, any  
19 interest bearing savings or time deposit shall be deemed to  
20 be dormant or inactive if the depositor, his personal agent  
21 or representative has not within the immediately preceding  
22 two years increased or decreased the amount of the deposit.

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## CHAPTER 178

(Com. Sub. for H. B. 1719—By Delegate Wooton)

[Passed March 10, 1984; in effect July 1, 1984. 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 five and seven, article five of said chapter; and to amend and reenact sections three and fifteen, article six of said chapter twenty-one-a, 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 five and seven, article



five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections three and fifteen, article six, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**Article**

1. **Department of Employment Security.**
5. **Employer Coverage and Responsibility.**
6. **Employee Eligibility; Benefits.**

**ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.**

**§21A-1-3. Definitions.**

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

3 "Administration fund" means the employment security ad-  
4 ministration fund, from which the administrative expenses  
5 under this chapter shall be paid.

6 "Annual payroll" means the total amount of wages for em-  
7 ployment paid by an employer during a twelve-month period  
8 ending with June thirty of any calendar year.

9 "Average annual payroll" means the average of the last  
10 three annual payrolls of an employer.

11 "Base period" means the first four out of the last five com-  
12 pleted calendar quarters immediately preceding the first day  
13 of the individual benefit year.

14 "Base period employer" means any employer who in the  
15 base period for any benefit year paid wages to an individual  
16 who filed claim for unemployment compensation within such  
17 benefit year.

18 "Base period wages" means wages paid to an individual  
19 during the base period by all his base period employers.

20 "Benefit year" with respect to an individual means the  
21 fifty-two-week period beginning with the first day of the calen-  
22 dar week in which a valid claim is effective, and thereafter the  
23 fifty-two-week period beginning with the first day of the calen-  
24 dar week in which such individual next files a valid claim for

25 benefits after the termination of his last preceding benefit  
26 year. An initial claim for benefits filed in accordance with  
27 the provision of this chapter shall be deemed to be a valid  
28 claim within the purposes of this definition if the individual  
29 has been paid wages in his base period sufficient to make him  
30 eligible for benefits under the provisions of this chapter.

31 "Benefits" means the money payable to an individual with  
32 respect to his unemployment.

33 "Board" means board of review.

34 "Calendar quarter" means the period of three consecutive  
35 calendar months ending on March thirty-one, June thirty, Sep-  
36 tember thirty or December thirty-one, or the equivalent thereof  
37 as the commissioner may by regulation prescribe.

38 "Commissioner" means the employment security commis-  
39 sioner.

40 "Computation date" means June thirty of the year immedi-  
41 ately preceding the January one on which an employer's con-  
42 tribution rate becomes effective.

43 "Employing unit" means an individual, or type of organi-  
44 zation, including any partnership, association, trust estate,  
45 joint-stock company, insurance company, corporation (do-  
46 mestic or foreign), state or political subdivision thereof, or  
47 their instrumentalities, as provided in paragraph (b), subdi-  
48 vision (9) of the definition of "employment" in this section,  
49 institution of higher education, or the receiver, trustee in bank-  
50 ruptcy, trustee or successor thereof, or the legal representative  
51 of a deceased person, which has on January first, one thousand  
52 nine hundred thirty-five, or subsequent thereto, had in its em-  
53 ploy one or more individuals performing service within this  
54 state.

55 "Employer" means:

56 (1) Until January one, one thousand nine hundred seventy-  
57 two, any employing unit which for some portion of a day,  
58 not necessarily simultaneously, in each of twenty different cal-  
59 endar weeks, which weeks need not be consecutive, within  
60 either the current calendar year, or the preceding calendar

61 year, has had in employment four or more individuals irres-  
62 spective of whether the same individuals were or were not em-  
63 ployed on each of such days;

64 (2) Any employing unit which is or becomes a liable em-  
65 ployer under any federal unemployment tax act;

66 (3) Any employing unit which has acquired or acquires the  
67 organization, trade or business, or substantially all the assets  
68 thereof, of an employing unit which at the time of such acqui-  
69 sition was an employer subject to this chapter;

70 (4) Any employing unit which, after December thirty-one,  
71 one thousand nine hundred sixty-three, and until January one,  
72 one thousand nine hundred seventy-two, in any one calendar  
73 quarter, in any calendar year, has in employment four or more  
74 individuals and has paid wages for employment in the total  
75 sum of five thousand dollars or more, or which, after such  
76 date, has paid wages for employment in any calendar year in  
77 the sum total of twenty thousand dollars or more;

78 (5) Any employing unit which, after December thirty-one,  
79 one thousand nine hundred sixty-three, and until January one,  
80 one thousand nine hundred seventy-two, in any three-week  
81 period, in any calendar year, has in employment ten or more  
82 individuals;

83 (6) For the effective period of its election pursuant to sec-  
84 tion three, article five of this chapter, any employing unit  
85 which has elected to become subject to this chapter;

86 (7) Any employing unit which, after December thirty-one,  
87 one thousand nine hundred seventy-one, (i) in any calendar  
88 quarter in either the current or preceding calendar year paid  
89 for service in employment wages of one thousand five hun-  
90 dred dollars or more, or (ii) for some portion of a day in each  
91 of twenty different calendar weeks, whether or not such weeks  
92 were consecutive, in either the current or the preceding calen-  
93 dar year had in employment at least one individual (irrespec-  
94 tive of whether the same individual was in employment in each  
95 such day) except as provided in subdivisions eleven and twelve  
96 hereof;

97 (8) Any employing unit for which service in employment, as

98 defined in subdivision (9) of the definition of "employment"  
99 in this section, is performed after December thirty-one, one  
100 thousand nine hundred seventy-one;

101 (9) Any employing unit for which service in employment, as  
102 defined in subdivision (10) of the definition of "employment"  
103 in this section, is performed after December thirty-one, one  
104 thousand nine hundred seventy-one;

105 (10) Any employing unit for which service in employment,  
106 as defined in paragraphs (b) and (c) of subdivision (9) of the  
107 definition of "employment" in this section, is performed after  
108 December thirty-one, one thousand nine hundred seventy-  
109 seven;

110 (11) Any employing unit for which agricultural labor, as  
111 defined in subdivision (12) of the definition of "employment"  
112 in this section, is performed after December thirty-one, one  
113 thousand nine hundred seventy-seven;

114 (12) Any employing unit for which domestic service in  
115 employment, as defined in subdivision (13) of the definition of  
116 "employment" in this section, is performed after December  
117 thirty-one, one thousand nine hundred seventy-seven.

118 "Employment," subject to the other provisions of this sec-  
119 tion, means:

120 (1) Service, including service in interstate commerce, per-  
121 formed for wages or under any contract of hire, written or oral,  
122 express or implied;

123 (2) Any service performed prior to January one, one thou-  
124 sand nine hundred seventy-two, which was employment as de-  
125 fined in this section prior to such date and, subject to the  
126 other provisions of this section, service performed after Dec-  
127 ember thirty-one, one thousand nine hundred seventy-one, by  
128 an employee, as defined in section 3306(i) of the Federal  
129 Unemployment Tax Act, including service in interstate com-  
130 merce;

131 (3) Any service performed prior to January one, one thou-  
132 sand nine hundred seventy-two, which was employment as de-  
133 fined in this section prior to such date and, subject to the other

134 provisions of this section, service performed after December  
135 thirty-one, one thousand nine hundred seventy-one, including  
136 service in interstate commerce, by any officer of a corporation;

137 (4) An individual's entire service, performed within or  
138 both within and without this state if: (a) The service is localized  
139 in this state or (b) the service is not localized in any state but  
140 some of the service is performed in this state and (i) the base  
141 of operations, or, if there is no base of operations, then the  
142 place from which such service is directed or controlled, is in  
143 this state or (ii) the base of operations or place from which  
144 such service is directed or controlled is not in any state in  
145 which some part of the service is performed but the individ-  
146 ual's residence is in this state;

147 (5) Service not covered under paragraph four of this sub-  
148 division and performed entirely without this state with respect  
149 to no part of which contributions are required and paid under  
150 an unemployment compensation law of any other state or of  
151 the federal government, shall be deemed to be employment  
152 subject to this chapter if the individual performing such services  
153 is a resident of this state and the commissioner approves the  
154 election of the employing unit for whom such services are per-  
155 formed that the entire service of such individual shall be deem-  
156 ed to be employment subject to this chapter;

157 (6) Service shall be deemed to be localized within a state,  
158 if: (a) The service is performed entirely within such state; or  
159 (b) the service is performed both within and without such state,  
160 but the service performed without such state is incidental to  
161 the individual's service within this state, as, for example, is  
162 temporary or transitory in nature or consists of isolated trans-  
163 actions;

164 (7) Services performed by an individual for wages shall  
165 be deemed to be employment subject to this chapter unless and  
166 until it is shown to the satisfaction of the commissioner that:  
167 (a) Such individual has been and will continue to be free  
168 from control or direction over the performance of such services,  
169 both under his contract of service and in fact; and (b) such  
170 service is either outside the usual course of the business for  
171 which such service is performed or that such service is per-

172 formed outside of all the places of business of the enterprise  
173 for which such service is performed; and (c) such individual is  
174 customarily engaged in an independently established trade,  
175 occupation, profession or business;

176 (8) All service performed by an officer or member of the  
177 crew of an American vessel (as defined in section three hun-  
178 dred five of an act of Congress entitled Social Security Act  
179 Amendment of 1946, approved August tenth, one thousand  
180 nine hundred forty-six) on or in connection with such vessel,  
181 provided that the operating office, from which the operations of  
182 such vessel operating on navigable waters within and without  
183 the United States is ordinarily and regularly supervised, man-  
184 aged, directed and controlled, is within this state.

185 (9) (a) Service performed after December thirty-one, one  
186 thousand nine hundred seventy-one, by an individual in the  
187 employ of this state or any of its instrumentalities (or in the  
188 employ of this state and one or more other states or their in-  
189 strumentalities) for a hospital or institution of higher education  
190 located in this state: *Provided*, That such service is excluded  
191 from "employment" as defined in the Federal Unemployment  
192 Tax Act solely by reason of section 3306 (c) (7) of that act  
193 and is not excluded from "employment" under subdivision (11)  
194 of the exclusion from employment;

195 (b) Service performed after December thirty-one, one thou-  
196 sand nine hundred seventy-seven, in the employ of this state or  
197 any of its instrumentalities or political subdivisions thereof or  
198 any of its instrumentalities or any instrumentality of more than  
199 one of the foregoing or any instrumentality of any foregoing  
200 and one or more other states or political subdivisions: *Pro-*  
201 *vided*, That such service is excluded from "employment" as  
202 defined in the Federal Unemployment Tax Act by section  
203 3306 (c) (7) of that act and is not excluded from "employ-  
204 ment" under subdivision (15) of the exclusion from em-  
205 ployment in this section; and

206 (c) Service performed after December thirty-one, one thou-  
207 sand nine hundred seventy-seven, in the employ of a non-  
208 profit educational institution which is not an institution of  
209 higher education;

210 (10) Service performed after December thirty-one, one  
211 thousand nine hundred seventy-one, by an individual in the  
212 employ of a religious, charitable, educational or other organi-  
213 zation but only if the following conditions are met:

214 (a) The service is excluded from "employment" as defined  
215 in the Federal Unemployment Tax Act solely by reason of  
216 section 3306 (c) (8) of that act; and

217 (b) The organization had four or more individuals in em-  
218 ployment for some portion of a day in each of twenty differ-  
219 ent weeks, whether or not such weeks were consecutive, with-  
220 in either the current or preceding calendar year, regardless of  
221 whether they were employed at the same moment of time;

222 (11) Service of an individual who is a citizen of the United  
223 States, performed outside the United States after December  
224 thirty-one, one thousand nine hundred seventy-one, (except in  
225 Canada and in the case of Virgin Islands after December  
226 thirty-one, one thousand nine hundred seventy-one, and before  
227 January one of the year following the year in which the sec-  
228 retary of labor approves for the first time an unemployment  
229 insurance law submitted to him by the Virgin Islands for ap-  
230 proval) in the employ of an American employer (other than  
231 service which is deemed "employment" under the provisions  
232 of subdivision (4), (5) or (6) of this definition of "employment"  
233 or the parallel provisions of another state's law) if:

234 (a) The employer's principal place of business in the United  
235 States is located in this state; or

236 (b) The employer has no place of business in the United  
237 States, but (i) the employer is an individual who is a resident  
238 of this state; or (ii) the employer is a corporation which is  
239 organized under the laws of this state; or (iii) the employer is  
240 a partnership or a trust and the number of the partners or  
241 trustees who are residents of this state is greater than the num-  
242 ber who are residents of any one other state; or

243 (c) None of the criteria of subparagraphs (a) and (b) of this  
244 subdivision (11) is met but the employer has elected coverage  
245 in this state or, the employer having failed to elect coverage  
246 in any state, the individual has filed a claim for benefits,  
247 based on such service, under the law of this state.

248 An "American employer," for purposes of this subdivision  
249 (11), means a person who is (i) an individual who is a resi-  
250 dent of the United States; or (ii) a partnership if two thirds or  
251 more of the partners are residents of the United States; or  
252 (iii) a trust, if all of the trustees are residents of the United  
253 States; or (iv) a corporation organized under the laws of the  
254 United States or of any state;

255 (12) Service performed after December thirty-one, one  
256 thousand nine hundred seventy-seven, by an individual in  
257 agricultural labor as defined in subdivision (5) of the exclu-  
258 sions from employment in this section when:

259 (a) Such service is performed for a person who (i) during  
260 any calendar quarter in either the current or the preceding  
261 calendar year paid remuneration in cash of twenty thousand  
262 dollars or more to individuals employed in agricultural labor  
263 [not taking into account service in agricultural labor performed  
264 before January one, one thousand nine hundred eighty-six, by  
265 an alien referred to in paragraph (b) of this subdivision (12)]  
266 or (ii) for some portion of a day in each of twenty different  
267 calendar weeks, whether or not such weeks were consecutive,  
268 in either the current or the preceding calendar year, employed  
269 in agricultural labor (not taking into account service in agri-  
270 cultural labor performed before January one, one thousand  
271 nine hundred eighty-six, by an alien referred to in clause (ii) of  
272 this paragraph) ten or more individuals, regardless of whether  
273 they were employed at the same moment of time;

274 (b) Such service is not performed in agricultural labor if  
275 performed before January one, one thousand nine hundred  
276 eighty-six, by an individual who is an alien admitted to the  
277 United States to perform service in agricultural labor pursuant  
278 to sections 214 (c) and 101 (a) (15) (H) of the Immigration  
279 and Nationality Act;

280 (c) For the purposes of the definition of employment, any  
281 individual who is a member of a crew furnished by a crew  
282 leader to perform service in agricultural labor for any other  
283 person shall be treated as an employee of such crew leader (i)  
284 if such crew leader holds a valid certificate of registration un-  
285 der the Farm Labor Contractor Registration Act of 1963; or



286 substantially all the members of such crew operate or maintain  
287 tractors, mechanized harvesting or crop-dusting equipment, or  
288 any other mechanized equipment, which is provided by such  
289 crew leader; and (ii) if such individual is not an employee of  
290 such other person within the meaning of subdivision (7) of the  
291 definition of employer;

291 (d) For the purposes of this subdivision (12), in the case  
292 of any individual who is furnished by a crew leader to per-  
293 form service in agricultural labor for any other person and  
294 who is not treated as an employee of such crew leader under  
295 subparagraph (c) of this subdivision (12), (i) such other per-  
296 son and not the crew leader shall be treated as the employer  
297 of such individual; and (ii) such other person shall be treated  
298 as having paid cash remuneration to such individual in an  
299 amount equal to the amount of cash remuneration paid to  
300 such individual by the crew leader (either on his own behalf  
301 or on behalf of such other person) for the service in agricul-  
302 tural labor performed for such other person;

303 (e) For the purposes of this subdivision (12), the term "crew  
304 leader" means an individual who (i) furnishes individuals to  
305 perform service in agricultural labor for any other person, (ii)  
306 pays (either on his own behalf or on behalf of such other per-  
307 son) the individuals so furnished by him for the service in agri-  
308 cultural labor performed by them, and (iii) has not entered into  
309 a written agreement with such other person under which such  
310 individual is designated as an employee of such other person;

311 (13) The term "employment" shall include domestic service  
312 after December thirty-one, one thousand nine hundred seventy-  
313 seven, in a private home, local college club or local chapter of  
314 a college fraternity or sorority performed for a person who  
315 paid cash remuneration of one thousand dollars or more after  
316 December thirty-one, one thousand nine hundred seventy-  
317 seven, in any calendar quarter in the current calendar year or  
318 the preceding calendar year to individuals employed in such  
319 domestic service.

320 Notwithstanding the foregoing definition of "employment,"  
321 if the services performed during one half or more of any pay  
322 period by an employee for the person employing him constitute

323 employment, all the services of such employee for such period  
324 shall be deemed to be employment; but if the services per-  
325 formed during more than one half of any such pay period by  
326 an employee for the person employing him do not constitute  
327 employment, then none of the services of such employee for  
328 such period shall be deemed to be employment.

329 The term "employment" shall not include:

330 (1) Service performed in the employ of this state or any  
331 political subdivision thereof, or any instrumentality of this  
332 state or its subdivisions, except as otherwise provided herein  
333 until December thirty-one, one thousand nine hundred seventy-  
334 seven;

335 (2) Service performed directly in the employ of another  
336 state, or its political subdivisions, except as otherwise provided  
337 in paragraph (a), subdivision (9) of the definition of "employ-  
338 ment," until December thirty-one, one thousand nine hundred  
339 seventy-seven;

340 (3) Service performed in the employ of the United States or  
341 any instrumentality of the United States exempt under the  
342 Constitution of the United States from the payments imposed  
343 by this law, except that to the extent that the Congress of the  
344 United States shall permit states to require any instrumen-  
345 talities of the United States to make payments into an unem-  
346 ployment fund under a state unemployment compensation law,  
347 all of the provisions of this law shall be applicable to such  
348 instrumentalities and to service performed for such instru-  
349 mentalities, in the same manner, to the same extent and on  
350 the same terms as to all other employers, employing units, in-  
351 dividuals and services: *Provided*, That if this state shall  
352 not be certified for any year by the secretary of labor  
353 under section 1603(c) of the federal Internal Revenue  
354 Code, the payments required of such instrumentalities with  
355 respect to such year shall be refunded by the commis-  
356 sioner from the fund in the same manner and within  
357 the same period as is provided in section nineteen, article  
358 five of this chapter, with respect to payments erroneously  
359 collected;

360 (4) Service performed after June thirty, one thousand nine  
361 hundred thirty-nine, with respect to which unemployment  
362 compensation is payable under the Railroad Unemployment  
363 Insurance Act and service with respect to which unemploy-  
364 ment benefits are payable under an unemployment compen-  
365 sation system for maritime employees established by an act of  
366 Congress. The commissioner may enter into agreements with  
367 the proper agency established under such an act of Congress  
368 to provide reciprocal treatment to individuals who, after ac-  
369 quiring potential rights to unemployment compensation un-  
370 der an act of Congress, or who have, after acquiring potential  
371 rights to unemployment compensation under an act of Con-  
372 gress, acquired rights to benefit under this chapter. Such  
373 agreement shall become effective ten days after such publica-  
374 tions which shall comply with the general rules of the depart-  
375 ment;

376 (5) Service performed by an individual in agricultural labor,  
377 except as provided in subdivision (12) of the definition of  
378 "employment" in this section. For purposes of this subdivision  
379 (5), the term "agricultural labor" includes all services per-  
380 formed:

381 (a) On a farm, in the employ of any person, in connection  
382 with cultivating the soil, or in connection with raising or har-  
383 vesting any agricultural or horticultural commodity, including  
384 the raising, shearing, feeding, caring for, training, and manage-  
385 ment of livestock, bees, poultry and fur-bearing animals and  
386 wildlife;

387 (b) In the employ of the owner or tenant or other operator  
388 of a farm, in connection with the operation, management, con-  
389 servation, improvement or maintenance of such farm and its  
390 tools and equipment, or in salvaging timber or clearing land  
391 of brush and other debris left by a hurricane, if the major part  
392 of such service is performed on a farm;

393 (c) In connection with the production or harvesting of any  
394 commodity defined as an agricultural commodity in section  
395 fifteen (g) of the Agricultural Marketing Act, as amended, or  
396 in connection with the ginning of cotton, or in connection with  
397 the operation or maintenance of ditches, canals, reservoirs

398 or waterways, not owned or operated for profit, used exclusive-  
399 ly for supplying and storing water for farming purposes;

400 (d) (i) In the employ of the operator of a farm in handling,  
401 planting, drying, packing, packaging, processing, freezing,  
402 grading, storing or delivering to storage or to market or to a  
403 carrier for transportation to market, in its unmanufactured  
404 state, any agricultural or horticultural commodity; but only if  
405 such operator produced more than one half of the commodity  
406 with respect to which such service is performed; or (ii) in the  
407 employ of a group of operators of farms (or a cooperative  
408 organization of which such operators are members) in the per-  
409 formance of service described in clause (i), but only if such  
410 operators produced more than one half of the commodity  
411 with respect to which such service is performed; but the pro-  
412 visions of clauses (i) and (ii) shall not be deemed to be applic-  
413 able with respect to service performed in connection with  
414 commercial canning or commercial freezing or in connection  
415 with any agricultural or horticultural commodity after its  
416 delivery to a terminal market for distribution for consump-  
417 tion;

418 (e) On a farm operated for profit if such service is not in  
419 the course of the employer's trade or business or is domestic  
420 service in a private home of the employer. As used in this  
421 subdivision (5), the term "farm" includes stock, dairy, poultry,  
422 fruit, fur-bearing animals, and truck farms, plantations,  
423 ranches, greenhouses, ranges and nurseries, or other similar  
424 land areas or structures used primarily for the raising of any  
425 agricultural or horticultural commodities;

426 (6) Domestic service in a private home, except as provided  
427 in subdivision (13) of the definition of "employment" in this  
428 section;

429 (7) Service performed by an individual in the employ of his  
430 son, daughter or spouse;

431 (8) Service performed by a child under the age of eighteen  
432 years in the employ of his father or mother;

433 (9) Service as an officer or member of a crew of an Ameri-  
434 can vessel, performed on or in connection with such vessel, if

435 the operating office, from which the operations of the vessel  
436 operating on navigable waters within or without the United  
437 States are ordinarily and regularly supervised, managed, direct-  
438 ed and controlled, is without this state;

439 (10) Service performed by agents of mutual fund broker-  
440 dealers or insurance companies, exclusive of industrial insur-  
441 ance agents, or by agents of investment companies, who are  
442 compensated wholly on a commission basis;

443 (11) Service performed (i) in the employ of a church or  
444 convention or association of churches, or an organization which  
445 is operated primarily for religious purposes and which is oper-  
446 ated, supervised, controlled or principally supported by a  
447 church or convention or association of churches; or (ii) by a  
448 duly ordained, commissioned or licensed minister of a church  
449 in the exercise of his ministry or by a member of a religious  
450 order in the exercise of duties required by such order; or (iii)  
451 prior to January one, one thousand nine hundred seventy-  
452 eight, in the employ of a school which is not an institution of  
453 higher education; or (iv) in a facility conducted for the purpose  
454 of carrying out a program of rehabilitation for individuals  
455 whose earning capacity is impaired by age or physical or  
456 mental deficiency or injury or providing remunerative work  
457 for individuals who because of their impaired physical or  
458 mental capacity cannot be readily absorbed in the competi-  
459 tive labor market by an individual receiving such rehabilita-  
460 tion or remunerative work; or (v) as part of an unemployment  
461 work-relief or work-training program assisted or financed in  
462 whole or in part by any federal agency or an agency of a state  
463 or political subdivision thereof, by an individual receiving such  
464 work relief or work training; or (vi) prior to January one, one  
465 thousand nine hundred seventy-eight, for a hospital in a state  
466 prison or other state correctional institution by an inmate of  
467 the prison or correctional institution, and after December  
468 thirty-one, one thousand nine hundred seventy-seven, by an  
469 inmate of a custodial or penal institution;

470 (12) Service performed in the employ of a school, college  
471 or university, if such service is performed (i) by a student who  
472 is enrolled and is regularly attending classes at such school,

473 college or university, or (ii) by the spouse of such a student,  
474 if such spouse is advised, at the time such spouse commences  
475 to perform such service, that (I) the employment of such spouse  
476 to perform such service is provided under a program to provide  
477 financial assistance to such student by such school, college or  
478 university, and (II) such employment will not be covered by  
479 any program of unemployment insurance;

480 (13) Service performed by an individual under the age of  
481 twenty-two who is enrolled at a nonprofit or public educational  
482 institution which normally maintains a regular faculty and cur-  
483 riculum and normally has a regularly organized body of students  
484 in attendance at the place where its educational activities are  
485 carried on as a student in a full-time program, taken for credit  
486 at such institution, which combines academic instruction with  
487 work experience, if such service is an integral part of such  
488 program, and such institution has so certified to the employer,  
489 except that this subdivision shall not apply to service perform-  
490 ed in a program established for or on behalf of an employer  
491 or group of employers;

492 (14) Service performed in the employ of a hospital, if such  
493 service is performed by a patient of the hospital, as defined in  
494 this section;

495 (15) Service in the employ of a governmental entity referred  
496 to in subdivision (9) of the definition of "employment" in this  
497 section if such service is performed by an individual in the  
498 exercise of duties (i) as an elected official; (ii) as a member of  
499 a legislative body, or a member of the judiciary, of a state or  
500 political subdivision; (iii) as a member of the state national  
501 guard or air national guard; (iv) as an employee serving on a  
502 temporary basis in case of fire, storm, snow, earthquake,  
503 flood or similar emergency; (v) in a position which, under  
504 or pursuant to the laws of this state, is designated as (1) a  
505 major nontenured policy-making or advisory position, or (II)  
506 a policy-making or advisory position the performance of the  
507 duties of which ordinarily does not require more than eight  
508 hours per week.

509 Notwithstanding the foregoing exclusions from the defini-  
510 tion of "employment," services, except agricultural labor and

511 domestic service in a private home, shall be deemed to be in  
512 employment if with respect to such services a tax is required to  
513 be paid under any federal law imposing a tax against which  
514 credit may be taken for contributions required to be paid into  
515 a state unemployment compensation fund, or which as a con-  
516 dition for full tax credit against the tax imposed by the Federal  
517 Unemployment Tax Act are required to be covered under this  
518 chapter.

519 "Employment office" means a free employment office or  
520 branch thereof, operated by this state, or any free public em-  
521 ployment office maintained as a part of a state controlled  
522 system of public employment offices in any other state.

523 "Fund" means the unemployment compensation fund estab-  
524 lished by this chapter.

525 "Hospital" means an institution which has been licensed,  
426 certified or approved by the state department of health as a  
527 hospital.

528 "Institution of higher education" means an educational in-  
529 stitution which:

530 (1) Admits as regular students only individuals having a  
531 certificate of graduation from a high school, or the recognized  
532 equivalent of such a certificate;

533 (2) Is legally authorized in this state to provide a program  
534 of education beyond high school;

535 (3) Provides an educational program for which it awards a  
536 bachelor's or higher degree, or provides a program which is  
537 acceptable for full credit toward such a degree, or provides a  
538 program of post-graduate or post-doctoral studies, or provides  
539 a program of training to prepare students for gainful em-  
540 ployment in a recognized occupation; and

541 (4) Is a public or other nonprofit institution.

542 Notwithstanding any of the foregoing provisions of this def-  
543 inition all colleges and universities in this state are institutions  
544 of higher education for purposes of this section.

545 "Payments" means the money required to be paid or that

546 may be voluntarily paid into the state unemployment compen-  
547 sation fund as provided in article five of this chapter.

548 "Separated from employment" means, for the purposes of  
549 this chapter, the total severance, whether by quitting, dis-  
550 charge or otherwise, of the employer-employee relationship.

551 "State" includes, in addition to the states of the United  
552 States, Puerto Rico, District of Columbia and the Virgin Is-  
553 lands.

554 "Total and partial unemployment" means:

555 (1) An individual shall be deemed totally unemployed in  
556 any week in which such individual is separated from employ-  
557 ment for an employing unit and during which he performs no  
558 services and with respect to which no wages are payable to  
559 him.

560 (2) An individual who has not been separated from em-  
561 ployment shall be deemed to be partially unemployed in any  
562 week in which due to lack of full time work wages payable  
563 to him are less than his weekly benefit amount plus twenty-  
564 five dollars: *Provided*, That said individual must have earn-  
565 ings of at least twenty-six dollars.

566 "Wages" means all remuneration for personal service, in-  
567 cluding commissions and bonuses and the cash value of all  
568 remuneration in any medium other than cash except for agri-  
569 cultural labor and domestic service: *Provided*, That the term  
570 "wages" shall not include:

571 (1) That part of the remuneration which, after remunera-  
572 tion equal to three thousand dollars has been paid to an indi-  
573 vidual by an employer with respect to employment during any  
574 calendar year, is paid after December thirty-one, one thousand  
575 nine hundred thirty-nine, and prior to January one, one thou-  
576 sand nine hundred forty-seven, to such individual by such em-  
577 ployer with respect to employment during such calendar year;  
578 or that part of the remuneration which, after remuneration  
579 equal to three thousand dollars with respect to employment  
580 after one thousand nine hundred thirty-eight, has been paid to  
581 an individual by an employer during any calendar year after



582 one thousand nine hundred forty-six, is paid to such indi-  
583 vidual by such employer during such calendar year, except  
584 that for the purposes of sections one, ten, eleven and thirteen,  
585 article six of this chapter, all remuneration earned by an in-  
586 dividual in employment shall be credited to the individual and  
587 included in his computation of base period wages: *Provided*,  
588 that notwithstanding the foregoing provisions, on and after  
589 January one, one thousand nine hundred sixty-two, the term  
590 "wages" shall not include:

591 That part of the remuneration which, after remuneration  
592 equal to three thousand six hundred dollars has been paid to  
593 an individual by an employer with respect to employment  
594 during any calendar year, is paid during any calendar year after  
595 one thousand nine hundred sixty-one; and shall not include that  
596 part of remuneration which, after remuneration equal to four  
597 thousand two hundred dollars is paid during a calendar year  
598 after one thousand nine hundred seventy-one; and shall not  
599 include that part of remuneration which, after remuneration  
600 equal to six thousand dollars is paid during a calendar year  
601 after one thousand nine hundred seventy-seven; and shall not  
602 include that part of remuneration which, after remuneration  
603 equal to eight thousand dollars is paid during a calendar year  
604 after one thousand nine hundred eighty, to an individual by  
605 an employer or his predecessor with respect to employment  
606 during any calendar year, is paid to such individual by such  
607 employer during such calendar year unless that part of the  
608 remuneration is subject to a tax under a federal law imposing  
609 a tax against which credit may be taken for contributions re-  
610 quired to be paid into a state unemployment fund. For the  
611 purposes of this subdivision (1), the term "employment" shall  
612 include service constituting employment under any unemploy-  
613 ment compensation law of another state; or which as a condi-  
614 tion for full tax credit against the tax imposed by the Federal  
615 Unemployment Tax Act is required to be covered under this  
616 chapter; and, except, that for the purposes of sections one, ten,  
617 eleven and thirteen, article six of this chapter, all remuneration  
618 earned by an individual in employment shall be credited to  
619 the individual and included in his computation of base  
620 period wages: *Provided*, That the remuneration paid to an  
621 individual by an employer with respect to employment in

622 another state or other states upon which contributions were  
623 required of and paid by such employer under an unemploy-  
624 ment compensation law of such other state or states shall be  
625 included as a part of the remuneration equal to the amounts  
626 of three thousand six hundred dollars or four thousand two  
627 hundred dollars or six thousand dollars or eight thousand dol-  
628 lars herein referred to. In applying such limitation on the  
629 amount of remuneration that is taxable, an employer shall be  
630 accorded the benefit of all or any portion of such amount which  
631 may have been paid by its predecessor or predecessors: *Pro-*  
632 *vided however*, That if the definition of the term "wages" as  
633 contained in section 3306(b) of the Internal Revenue Code of  
634 1954, as amended: (a) Effective prior to January one, one  
635 thousand nine hundred sixty-two, to include remuneration in  
636 excess of three thousand dollars or (b) effective on or after  
637 January one, one thousand nine hundred sixty-two, to include  
638 remuneration in excess of three thousand six hundred dollars,  
639 or (c) effective on or after January one, one thousand nine  
640 hundred seventy-two, to include remuneration in excess of  
641 four thousand two hundred dollars or (d) effective on or after  
642 January one, one thousand nine hundred seventy-eight, to in-  
643 clude remuneration in excess of six thousand dollars or (e)  
644 effective on or after January one, one thousand nine hundred  
645 eighty, to include remuneration in excess of eight thousand  
646 dollars, paid to an individual by an employer under the Fed-  
647 eral Unemployment Tax Act during any calendar year, wages  
648 for the purposes of this definition shall include remuneration  
649 paid in a calendar year to an individual by an employer sub-  
650 ject to this article or his predecessor with respect to employ-  
651 ment during any calendar year up to an amount equal to the  
652 amount of remuneration taxable under the Federal Unemploy-  
653 ment Tax Act;

654 (2) The amount of any payment made after December  
655 thirty-one, one thousand nine hundred fifty-two (including any  
656 amount paid by an employer for insurance or annuities, or in-  
657 to a fund, to provide for any such payment), to, or on behalf  
658 of, an individual in its employ or any of his dependents, under  
659 a plan or system established by an employer which makes pro-  
660 vision for individuals in its employ generally (or for such indi-  
661 viduals and their dependents), or for a class or classes of such

662 individuals (or for a class or classes of such individuals and  
663 their dependents), on account of (A) retirement, or (B) sick-  
664 ness or accident disability, or (C) medical or hospitalization  
665 expenses in connection with sickness or accident disability, or  
666 (D) death;

667 (3) Any payment made after December thirty-one, one  
668 thousand nine hundred fifty-two, by an employer to an indi-  
669 vidual in its employ (including any amount paid by an em-  
670 ployer for insurance or annuities, or into a fund, to provide for  
671 any such payment) on account of retirement;

672 (4) Any payment made after December thirty-one, one  
673 thousand nine hundred fifty-two, by an employer on account  
674 of sickness or accident disability, or medical or hospitalization  
675 expenses in connection with sickness or accident disability, to,  
676 or on behalf of, an individual in its employ after the expira-  
677 tion of six calendar months following the last calendar month  
678 in which such individual worked for such employer;

679 (5) Any payment made after December thirty-one, one  
680 thousand nine hundred fifty-two, by an employer to, or on  
681 behalf of, an individual in its employ or his beneficiary (A)  
682 from or to a trust described in section 401(a) which is exempt  
683 from tax under section 501(a) of the Federal Internal Revenue  
684 Code at the time of such payments unless such payment is  
685 made to such individual as an employee of the trust as re-  
686 munerated for services rendered by such individual and not  
687 as a beneficiary of the trust, or (B) under or to an annuity  
688 plan which, at the time of such payment, is a plan described  
689 in section 403(a) of the Federal Internal Revenue Code;

690 (6) The payment by an employer of the tax imposed upon  
691 an employer under section 3101 of the Federal Internal Reve-  
692 nue Code with respect to remuneration paid to an employee  
693 for domestic service in a private home of the employer or  
694 agricultural labor;

695 (7) Remuneration paid by an employer after December  
696 thirty-one, one thousand nine hundred fifty-two, in any me-  
697 dium other than cash to an individual in its employ for service  
698 not in the course of the employer's trade or business;

699 (8) Any payment (other than vacation or sick pay) made by  
700 an employer after December thirty-one, one thousand nine  
701 hundred fifty-two, to an individual in its employ after the  
702 month in which he attains the age of sixty-five, if he did not  
703 work for the employer in the period for which such payment  
704 is made;

705 (9) Payments, not required under any contract of hire, made  
706 to an individual with respect to his period of training or service  
707 in the armed forces of the United States by an employer by  
708 which such individual was formerly employed;

709 (10) Vacation pay, severance pay or savings plans received  
710 by an individual before or after becoming totally or partially  
711 unemployed but earned prior to becoming totally or partially  
712 unemployed: *Provided*, That the term totally or partially un-  
713 employed shall not be interpreted to include (1) employees who  
714 are on vacation by reason of the request of the employees or  
715 their duly authorized agent, for a vacation at a specific time,  
716 and which request by the employees or their agent is acceded  
717 to by their employer, (2) employees who are on vacation by  
718 reason of the employer's request provided they are so informed  
719 at least ninety days prior to such vacation, or (3) employees  
720 who are on vacation by reason of the employer's request  
721 where such vacation is in addition to the regular vacation and  
722 the employer compensates such employee at a rate equal to  
723 or exceeding their regular daily rate of pay during the vaca-  
724 tion period.

725 Gratuities customarily received by an individual in the  
726 course of his employment from persons other than his em-  
727 ploying unit shall be treated as wages paid by his employing  
728 unit, if accounted for and reported to such employing unit.

729 The reasonable cash value of remuneration in any medium  
730 other than cash shall be estimated and determined in accord-  
731 ance with rules prescribed by the commissioner, except for  
732 remuneration other than cash for services performed in agri-  
733 cultural labor and domestic service.

734 "Week" means a calendar week, ending at midnight Sat-  
735 ursday, or the equivalent thereof, as determined in accordance  
736 with the regulations prescribed by the commissioner.

737 "Weekly benefit rate" means the maximum amount of bene-  
738 fit an eligible individual will receive for one week of total un-  
739 employment.

740 "Year" means a calendar year or the equivalent thereof, as  
741 determined by the commissioner.

#### **ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.**

§21A-5-5. Rate of contribution.

§21A-5-7. Joint and separate accounts.

##### **§21A-5-5. Rate of contribution.**

1 On or after January first, one thousand nine hundred forty-  
2 one, an employer shall make payments to the unemployment  
3 compensation fund equal to two and seven-tenths percent of  
4 wages paid by him with respect to employment during each  
5 calendar year beginning with the calendar year one thousand  
6 nine hundred forty-one, subject, however, to other provisions  
7 of this article; except that on and after January first, one  
8 thousand nine hundred seventy-two, each employer subject  
9 to this chapter shall pay contributions at the rate of one and  
10 five-tenths percent of wages paid by him with respect to  
11 employment during each calendar year until he has been  
12 an employer for not less than thirty-six consecutive months  
13 ending on the computation date; thereafter, his contribution  
14 rate shall be determined in accordance with the provisions  
15 of section ten of this article.

16 On and after July one, one thousand nine hundred eighty-  
17 one, each employer subject to this chapter shall pay contri-  
18 butions at the rate of two and seven-tenths percent of wages  
19 paid by him with respect to employment during each calen-  
20 dar year until he has been an employer for not less than  
21 thirty-six consecutive months ending on the computation  
22 date; thereafter, his contribution rate shall be determined in  
23 accordance with the provisions of section ten of this article.

24 Notwithstanding any other provision of this chapter to the  
25 contrary, on or after the first day of July, one thousand nine  
26 hundred eighty-one, any foreign corporation or business  
27 entity engaged in the construction trades shall pay contributions  
28 at the rate of seven and five-tenths percent of wages paid

29 by him with respect to employment during each calendar year  
30 until he has been an employer for not less than thirty-six  
31 consecutive months ending on the computation date; there-  
32 after, his contribution rate shall be determined in accordance  
33 with the provisions of section ten of this article.

**§21A-5-7. Joint and separate accounts.**

1 (1) The commissioner shall maintain a separate account  
2 for each employer, and shall credit his account with all con-  
3 tributions paid by him prior to July first, one thousand nine  
4 hundred sixty-one. On and after July first, one thousand  
5 nine hundred sixty-one, the commissioner shall maintain a  
6 separate account for each employer, and shall credit said  
7 employer's account with all contributions of such employer  
8 in excess of seven tenths of one percent of taxable wages;  
9 and on and after July first, one thousand nine hundred  
10 seventy-one, the commissioner shall maintain a separate ac-  
11 count for each employer, and shall credit said employer's  
12 account with all contributions of such employer in excess of  
13 four tenths of one percent of taxable wages: *Provided*, That  
14 any adjustment made in any employer's account after the  
15 computation date shall not be used in the computation of  
16 the balance of an employer until the next following computa-  
17 tion date: *Provided, however*, That nothing in this chapter  
18 shall be construed to grant an employer or individual in his  
19 service prior claims or rights to the amounts paid by him  
20 into the fund, either on his behalf or on behalf of such  
21 individuals. The account of any employer which had been  
22 inactive for a period of four consecutive calendar years shall  
23 be terminated for all purposes.

24 (2) Benefits paid to an eligible individual for regular and  
25 extended total or partial unemployment beginning after the  
26 effective date of this article shall be charged to the account  
27 of the last employer with whom he has been employed as  
28 much as thirty working days, whether or not such days are  
29 consecutive: *Provided*, That no employer's account shall be  
30 charged with benefits paid to any individual who has been  
31 separated from a noncovered employing unit in which he  
32 was employed as much as thirty days, whether or not such  
33 days are consecutive: *Provided, however*, That no employer's

34 account shall be charged with more than fifty percent of the  
35 benefits paid to an eligible individual as extended benefits  
36 under the provisions of article six-a of this chapter: *Provided*  
37 *further*, That state and local government employers shall be  
38 charged with one hundred percent of the benefits paid to  
39 an eligible individual as extended benefits. Beginning on  
40 July one, one thousand nine hundred eighty-four, benefits  
41 paid to an individual are to be charged to the accounts of  
42 his employers in the base period, the amount of such charges,  
43 chargeable to the account of each such employer, to be that  
44 portion of the total benefits paid such individual as the  
45 wages paid him by such employer in the base period are to  
46 the total wages paid him during his base period for insured  
47 work by all his employers in the base period. For the pur-  
48 poses of this section, no base period employer's account  
49 shall be charged for benefits paid under this chapter to a  
50 former employee, provided such base period employer fur-  
51 nishes separation information within fourteen days from the  
52 date the notice was mailed or delivered, which results in a  
53 disqualification under the provision set forth in subsection  
54 one, section three, article six or subsection two, section three,  
55 article six of this chapter or would have resulted in a dis-  
56 qualification under such subsection except for a subsequent  
57 period of covered employment by another employing unit.  
58 One half of extended benefits paid to an individual after  
59 July one, one thousand nine hundred eighty-four, and sub-  
60 sequent years are to be charged to the accounts of his em-  
61 ployers, except state and local government employers, in the  
62 base period in the same manner provided for the charging  
63 of regular benefits.

64 (3) The commissioner shall, for each calendar year here-  
65 after, classify employers in accordance with their actual ex-  
66 perience in the payment of contributions on their own behalf  
67 and with respect to benefits charged against their accounts,  
68 with a view of fixing such contribution rates as will reflect  
69 such experiences. For the purpose of fixing such contribution  
70 rates for each calendar year, the books of the department shall  
71 be closed on July thirty-one of the preceding calendar year;  
72 and any contributions thereafter paid, as well as benefits  
73 thereafter paid with respect to compensable weeks ending on

74 or before June thirty of the preceding calendar year, shall  
75 not be taken into account until the next annual date for  
76 fixing contribution rates: *Provided*, That if an employer has  
77 failed to furnish to the commissioner on or before July thirty-  
78 one of such preceding calendar year the wage information  
79 for all past periods necessary for the computation of the  
80 contribution rate, such employer's rate shall be, if it is im-  
81 mediately prior to such July thirty-one, less than three and  
82 three-tenths percent, increased to three and three-tenths per-  
83 cent: *Provided, however*, That any payment made or any  
84 information necessary for the computation of a reduced rate  
85 furnished on or before the termination of an extension of  
86 time for such payment or reporting of such information  
87 granted pursuant to a regulation of the commissioner autho-  
88 rizing such extension, shall be taken into account for the  
89 purposes of fixing contribution rates: *Provided further*, That  
90 when the time for filing any report or making any payment  
91 required hereunder falls on Saturday, Sunday or a legal  
92 holiday, the due date shall be deemed to be the next suc-  
93 ceeding business day: *And provided further*, That whenever,  
94 through mistake or inadvertence, erroneous credits or charges  
95 are found to have been made to or against the reserved ac-  
96 count of any employer, the rate shall be adjusted as of  
97 January one of the calendar year in which such mistake or  
98 inadvertence is discovered, but payments, made under any  
99 rate assigned prior to January one of such year shall not  
100 be deemed to be erroneously collected.

101 (4) The commissioner may prescribe regulations for the  
102 establishment, maintenance and dissolution of joint accounts  
103 by two or more employers, and shall, in accordance with such  
104 regulations and upon application by two or more employers  
105 to establish such an account, or to merge their several in-  
106 dividual accounts in a joint account, maintain such joint  
107 account as if it constituted a single employer's account.

108 (5) State and local government employers are hereby  
109 authorized to enter into joint accounts and to maintain such  
110 joint account or accounts as if it or they constituted a single  
111 employer's account or accounts.

112 (6) Effective on and after July one, one thousand nine



113 hundred eighty-one, if an employer has failed to furnish to  
114 the commissioner on or before August thirty-one of one  
115 thousand nine hundred eighty, and each year thereafter, with  
116 the exception of one thousand nine hundred eighty-one, which  
117 due date shall be September thirty, one thousand nine hundred  
118 eighty-one, the wage information for all past periods neces-  
119 sary for the computation of the contribution rate, such em-  
120 ployer's rate shall be, if it is immediately prior to July one,  
121 one thousand nine hundred eighty-one, less than seven and  
122 five-tenths percent, increased to seven and five-tenths percent.

#### **ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.**

§21A-6-3. Disqualification for benefits.

§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, educational institutions and governmental entities.

#### **§21A-6-3. Disqualification for benefits.**

1 Upon the determination of the facts by the commissioner, an  
2 individual shall be disqualified for benefits:

3 (1) For the week in which he left his most recent work  
4 voluntarily without good cause involving fault on the part of  
5 the employer and until the individual returns to covered  
6 employment and has been employed in covered employment  
7 at least thirty working days.

8 For the purpose of this subdivision (1), an individual shall  
9 not be deemed to have left his most recent work voluntarily  
10 without good cause involving fault on the part of the em-  
11 ployer, if such individual leaves his most recent work with  
12 an employer and if he in fact, within a fourteen-day calendar  
13 period, does return to employment with the last preceding  
14 employer with whom he was previously employed within the  
15 past year prior to his return to work day, and which last  
16 preceding employer, after having previously employed such  
17 individual for thirty working days or more, laid off such  
18 individual because of lack of work, which layoff occasioned  
19 the payment of benefits under this chapter or could have  
20 occasioned the payment of benefits under this chapter had  
21 such individual applied for such benefits. It is the intent of  
22 this paragraph to cause no disqualification for benefits for

23 such an individual who complies with the foregoing set of  
24 requirements and conditions.

25 (2) For the week in which he was discharged from his  
26 most recent work for misconduct and the six weeks imme-  
27 diately following such week; or for the week in which he  
28 was discharged from his last thirty-day employing unit for  
29 misconduct and the six weeks immediately following such  
30 week. Such disqualification shall carry a reduction in the  
31 maximum benefit amount equal to six times the individual's  
32 weekly benefit. However, if the claimant returns to work in  
33 covered employment for thirty days during his benefit year,  
34 whether or not such days are consecutive, the maximum  
35 benefit amount shall be increased by the amount of the de-  
36 crease imposed under the disqualification; except that:

37 If he were discharged from his most recent work for one  
38 of the following reasons, or if he were discharged from his  
39 last thirty days employing unit for one of the following  
40 reasons: Misconduct consisting of willful destruction of his  
41 employer's property; assault upon the person of his employer  
42 or any employee of his employer; if such assault is com-  
43 mitted at such individual's place of employment or in the  
44 course of employment; reporting to work in an intoxicated  
45 condition, or being intoxicated while at work; arson, theft,  
46 larceny, fraud or embezzlement in connection with his work;  
47 or any other gross misconduct; he shall be and remain dis-  
48 qualified for benefits until he has thereafter worked for at  
49 least thirty days in covered employment: *Provided*, That for  
50 the purpose of this subdivision the words "any other gross  
51 misconduct" shall include, but not be limited to, any act  
52 or acts of misconduct where the individual has received  
53 prior written warning that termination of employment may  
54 result from such act or acts.

55 (3) For the week in which he failed without good cause  
56 to apply for available, suitable work, accept suitable work  
57 when offered, or return to his customary self-employment  
58 when directed to do so by the commissioner, and for the  
59 four weeks which immediately follow for such additional  
60 period as any offer of suitable work shall continue open for  
61 his acceptance. Such disqualification shall carry a reduction

62 in the maximum benefit amount equal to four times the  
63 individual's weekly benefit amount.

64 (4) For a week in which his total or partial unemploy-  
65 ment is due to a stoppage of work which exists because of  
66 a labor dispute at the factory, establishment or other prem-  
67 ises at which he was last employed, unless the commissioner  
68 is satisfied that he was not (one) participating, financing or  
69 directly interested in such dispute, and (two) did not belong  
70 to a grade or class of workers who were participating, financ-  
71 ing or directly interested in the labor dispute which resulted  
72 in the stoppage of work. No disqualification under this sub-  
73 division shall be imposed if the employees are required to  
74 accept wages, hours or conditions of employment substan-  
75 tially less favorable than those prevailing for similar work in  
76 the locality, or if employees are denied the right of collective  
77 bargaining under generally prevailing conditions, or if an  
78 employer shuts down his plant or operation or dismisses  
79 his employees in order to force wage reduction, changes in  
80 hours or working conditions.

81 For the purpose of this subdivision, if any stoppage of  
82 work continues longer than four weeks after the termination  
83 of the labor dispute which caused stoppage of work, there  
84 shall be a rebuttable presumption that part of the stoppage  
85 of work which exists after said period of four weeks after  
86 the termination of said labor dispute did not exist because  
87 of said labor dispute; and in such event the burden shall be  
88 upon the employer or other interested party to show other-  
89 wise.

90 (5) For a week with respect to which he is receiving or  
91 has received:

92 (a) Wages in lieu of notice;

93 (b) Compensation for temporary total disability under the  
94 workers' compensation law of any state or under a similar  
95 law of the United States;

96 (c) Unemployment compensation benefits under the laws  
97 of the United States or any other state.

98 (6) For the week in which an individual has voluntarily

99 quit employment to marry or to perform any marital, parental  
100 or family duty, or to attend to his or her personal business  
101 or affairs and until the individual returns to covered employ-  
102 ment and has been employed in covered employment at least  
103 thirty working days.

104 (7) Benefits shall not be paid to any individual on the  
105 basis of any services, substantially all of which consist of  
106 participating in sports or athletic events or training or prepar-  
107 ing to so participate, for any week which commences during  
108 the period between two successive sport seasons (or similar  
109 periods) if such individual performed such services in the  
110 first of such seasons (or similar periods) and there is a rea-  
111 sonable assurance that such individual will perform such  
112 services in the later of such seasons (or similar periods).

113 (8) (a) Benefits shall not be paid on the basis of services  
114 performed by an alien unless such alien is an individual who  
115 has been lawfully admitted for permanent residence or other-  
116 wise is permanently residing in the United States under color  
117 of law (including an alien who is lawfully present in the  
118 United States as a result of the application of the provisions  
119 of section 203 (a) (7) or section 212 (d) (5) of the Immigra-  
120 tion and Nationality Act: *Provided*, That any modifications  
121 to the provisions of section 3304 (a) (14) of the Federal  
122 Unemployment Tax Act as provided by Public Law 94-566  
123 which specify other conditions or other effective date than  
124 stated herein for the denial of benefits based on services  
125 performed by aliens and which modifications are required to  
126 be implemented under state law as a condition for full tax  
127 credit against the tax imposed by the Federal Unemployment  
128 Tax Act shall be deemed applicable under the provisions of  
129 this section;

130 (b) Any data or information required of individuals apply-  
131 ing for benefits to determine whether benefits are not payable  
132 to them because of their alien status shall be uniformly re-  
133 quired from all applicants for benefits;

134 (c) In the case of an individual whose application for  
135 benefits would otherwise be approved, no determination that  
136 benefits to such individual are not payable because of his alien

137 status shall be made except upon a preponderance of the  
138 evidence.

139 (9) For each week in which an individual is unemployed  
140 because, having voluntarily left employment to attend a school,  
141 college, university or other educational institution, he is  
142 attending such school, college, university or other educational  
143 institution, or is awaiting entrance thereto or is awaiting the  
144 starting of a new term or session thereof, and until the in-  
145 dividual returns to covered employment.

146 (10) For each week in which he is unemployed because of  
147 his quest, or that of his duly authorized agent, for a vaca-  
148 tion period at a specified time that would leave the employer  
149 no other alternative but to suspend operations.

150 (11) For each week in which he is receiving or has received  
151 benefits under Title II of the Social Security Act or similar  
152 payments under any act of Congress and/or remuneration  
153 in the form of an annuity, pension or other retirement pay  
154 from a base period and/or chargeable employer or from  
155 any trust or fund contributed to by a base period and/or  
156 chargeable employer. But if such remuneration for any week  
157 is less than the benefits which would otherwise be due him  
158 for such week under this chapter, he shall be entitled to  
159 receive for such week, if otherwise eligible, benefits reduced  
160 by the amount of such remuneration: *Provided*, That if such  
161 amount of benefits is not a multiple of one dollar, it shall  
162 be computed to the next lowest multiple of one dollar:  
163 *Provided, however*, That there shall be no disqualification if  
164 in the individual's base period there are no wages which  
165 were paid by the base period and/or chargeable employer  
166 paying such remuneration, or by a fund into which the em-  
167 ployer has paid during said base period. Claimant may be  
168 required to certify as to whether or not he is receiving or has  
169 been receiving remuneration in the form of an annuity,  
170 pension or other retirement pay from a base period and/or  
171 chargeable employer or from a trust fund contributed to by  
172 a base period and/or chargeable employer.

173 (12) For each week in which and for fifty-two weeks  
174 thereafter, beginning with the date of the decision, if the

175 commissioner finds such individual who within twenty-four  
176 calendar months immediately preceding such decision, has  
177 made a false statement or representation knowing it to be  
178 false or knowingly fails to disclose a material fact, to obtain  
179 or increase any benefit or payment under this article: *Provided,*  
180 That disqualification under this subdivision shall not preclude  
181 prosecution under section seven, article ten of this chapter.

**§21A-6-15. Benefit payments for service with nonprofit organiza-  
tions, state hospitals, institutions of higher education,  
educational institutions and governmental entities.**

1 (1) Benefits based on service in employment as defined in  
2 subdivisions (9) and (10) of the definition of "employment"  
3 in section three, article one of this chapter, shall be payable  
4 in the same amount, on the same terms and subject to the  
5 same conditions as compensation payable on the basis of  
6 other service subject to this chapter; except that benefits based  
7 on service in an instructional, research or principal adminis-  
8 trative capacity in an institution of higher education shall not  
9 be paid to an individual for any week of unemployment which  
10 begins during the period between two successive academic  
11 years, or during a similar period between two regular terms,  
12 whether or not successive, or during a period of paid sabbati-  
13 cal leave provided for in the individual's contract, if the indi-  
14 vidual has a contract or contracts to perform services in any  
15 such capacity for any institution or institutions of higher edu-  
16 cation for both such academic years or both such terms.

17 (2) Benefits based on service in employment defined in  
18 subdivisions (9) and (10) of the definition of "employment"  
19 in section three, article one of this chapter, shall be payable  
20 in the same amount, on the same terms and subject to the same  
21 conditions as benefits payable on the basis of other service  
22 subject to this chapter, except that:

23 (a) With respect to service performed after December  
24 thirty-one, one thousand nine hundred seventy-seven, in an  
25 instructional, research or principal administrative capacity  
26 for an educational institution, benefits shall not be paid based  
27 on such services for any week of unemployment commencing  
28 during the period between two successive academic years, or

29 during a similar period between two regular but not successive  
30 terms, or during any holiday or vacation period, or during a  
31 period of paid sabbatical leave provided for in the individual's  
32 contract, to any individual if such individual performs such  
33 services in the first of such academic years (or terms) or prior  
34 to the beginning of such holiday or vacation period and if  
35 there is a contract or a reasonable assurance that such indi-  
36 vidual will perform services in any such capacity for any  
37 educational institution in the second of such academic years  
38 or terms or after such holiday or vacation period: *Provided,*  
39 That subsection (1) of this section shall apply with respect to  
40 such services prior to January one, one thousand nine hundred  
41 seventy-eight;

42 (b) With respect to services performed after April one, one  
43 thousand nine hundred eighty-three, in any other capacity for  
44 an educational institution, benefits shall not be paid on the  
45 basis of such services to any individual for any week which  
46 commences during any holiday or vacation period, or during  
47 a period between two successive academic years or terms if  
48 such individual performs such services in the first of such  
49 academic years or terms or prior to the beginning of such  
50 holiday or vacation period and there is a reasonable assurance  
51 that such individual will perform such services in the second  
52 of such academic years or terms or after such holiday or vaca-  
53 tion periods, except that if compensation is denied to any in-  
54 dividual under this subsection and such individual was not  
55 offered an opportunity to perform such services for the edu-  
56 cational institution for the second of such academic years or  
57 terms, such individual shall be entitled to a retroactive pay-  
58 ment of compensation for each week for which the individual  
59 filed a timely claim for compensation and for which compen-  
60 sation was denied solely by reason of this clause.

61 (c) With respect to any services performed after April one,  
62 one thousand nine hundred eighty-four, described in subdivi-  
63 sions (a) and (b) of this section, benefits shall not be payable  
64 on the basis of services in any such capacities as specified in  
65 subdivisions (a) and (b) of this section, to any individual who  
66 performed such services for or on behalf of an educational in-  
67 stitution while in the employ of an educational service agency.

68 For purposes of this subdivision the term "educational service  
69 agency" means a governmental agency or governmental en-  
70 tity which is established and operated exclusively for the pur-  
71 pose of providing such services to one or more educational in-  
72 stitutions.

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## CHAPTER 179

(S. B. 164—By Senator Harman and Senaton Chafin)

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[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact sections three hundred one and three hundred twelve, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to priority of certain security interests; the period for filing purchase money security interests to preserve priority over the rights of transferees in bulk or lien creditors; and the period for filing purchase money security interests in collateral other than inventory to preserve priority over other security interests in the same collateral.

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

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

### **ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER.**

#### **PART 3. RIGHTS OF THIRD PARTIES: PERFECTED AND UNPERFECTED SECURITY INTERESTS: RULES OF PRIORITY.**

- §46-9-301. Persons who take priority over unperfected security interests; right of "lien creditor."  
§46-9-312. Priorities among conflicting security interests in the same collateral.



PART 3. RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED  
SECURITY INTERESTS; RULES OF PRIORITY.

§46-9-301. **Persons who take priority over unperfected security  
interests; right of "lien creditor."**

- 1 (1) Except as otherwise provided in subsection (2), an  
2 unperfected security interest is subordinate to the rights  
3 of
- 4 (a) Persons entitled to priority under section 9-312;
- 5 (b) A person who becomes a lien creditor before the  
6 security interest is perfected;
- 7 (c) In the case of goods, instruments, documents and  
8 chattel paper, a person who is not a secured party and  
9 who is a transferee in bulk or other buyer not in ordinary  
10 course of business; or is a buyer of farm products in  
11 ordinary course of business, to the extent that he gives  
12 value and receives delivery of the collateral without  
13 knowledge of the security interest and before it is per-  
14 fected; and
- 15 (d) In the case of accounts and general intangibles, a  
16 person who is not a secured party and who is a transferee  
17 to the extent that he gives value without knowledge of  
18 the security interest and before it is perfected.
- 19 (2) If the secured party files with respect to a purchase  
20 money security interest before or within twenty days  
21 after the debtor receives possession of the collateral,  
22 he takes priority over the rights of a transferee in bulk or  
23 of a lien creditor which arise between the time the se-  
24 curity interest attaches and the time of filing.
- 25 (3) A "lien creditor" means a creditor who has acquired  
26 a lien on the property involved by attachment, levy or the  
27 like and includes an assignee for benefit of creditors from  
28 the time of assignment, and a trustee in bankruptcy from  
29 the date of the filing of the petition or a receiver in equity  
30 from the time of appointment.
- 31 (4) A person who becomes a lien creditor while a  
32 security interest is perfected takes subject to the security

33 interest only to the extent that it secures advances made  
34 before he becomes a lien creditor or within forty-five days  
35 thereafter or made without knowledge of the lien or pur-  
36 suant to a commitment entered into without knowledge  
37 of the lien.

**§46-9-312. Priorities among conflicting security interests in  
the same collateral.**

1 (1) The rules of priority stated in other sections of this  
2 part and in the following sections shall govern when  
3 applicable: Section 4-208 with respect to the security in-  
4 terests of collecting banks in items being collected, accom-  
5 panying documents and proceeds; section 9-103 on secur-  
6 ity interests related to other jurisdictions; section 9-114  
7 on consignments.

8 (2) A perfected security interest in crops for new  
9 value given to enable the debtor to produce the crops  
10 during the production season and given not more than  
11 three months before the crops become growing crops by  
12 planting or otherwise takes priority over an earlier per-  
13 fected security interest to the extent that such earlier  
14 interest secures obligations due more than six months  
15 before the crops become growing crops by planting or  
16 otherwise, even though the person giving new value had  
17 knowledge of the earlier security interest.

18 (3) A perfected purchase money security interest in  
19 inventory has priority over a conflicting security interest  
20 in the same inventory and also has priority in identifiable  
21 cash proceeds received on or before the delivery of the  
22 inventory to a buyer if:

23 (a) The purchase money security interest is perfected  
24 at the time the debtor receives possession of the inven-  
25 tory; and

26 (b) The purchase money secured party gives notifica-  
27 tion in writing to the holder of the conflicting security  
28 interest if the holder had filed a financing statement  
29 covering the same types of inventory (i) before the date  
30 of the filing made by the purchase money secured party,  
31 or (ii) before the beginning of the twenty-one day period

32 where the purchase money security interest is temporar-  
33 ily perfected without filing or possession (subsection (5)  
34 of section 9-304); and

35 (c) The holder of the conflicting security interest re-  
36 ceives the notification within five years before the debtor  
37 receives possession of the inventory; and

38 (d) The notification states that the person giving the  
39 notice has or expects to acquire a purchase money secur-  
40 ity interest in inventory of the debtor, describing such  
41 inventory by item or type.

42 (4) A purchase money security interest in collateral  
43 other than inventory has priority over a conflicting secur-  
44 ity interest in the same collateral or its proceeds if the  
45 purchase money security interest is perfected at the time  
46 the debtor receives possession of the collateral or within  
47 twenty days thereafter.

48 (5) In all cases not governed by other rules stated in  
49 this section (including cases of purchase money security  
50 interest which do not qualify for the special priorities set  
51 forth in subsections (3) and (4) of this section), priority  
52 between conflicting security interests in the same collat-  
53 eral shall be determined according to the following rules:

54 (a) Conflicting security interests rank according to  
55 priority in time of filing or perfection. Priority dates  
56 from the time a filing is first made covering the collateral  
57 or the time the security interest is first perfected, which-  
58 ever is earlier, provided that there is no period thereafter  
59 when there is neither filing nor perfection.

60 (b) So long as conflicting security interests are unper-  
61 fected, the first to attach has priority.

62 (6) For the purposes of subsection (5) a date of filing  
63 or perfection as to collateral is also a date of filing or  
64 perfection as to proceeds.

65 (7) If future advances are made while a security in-  
66 terest is perfected by filing, the taking of possession, or  
67 under section 8-321 on securities, the security interest has  
68 the same priority for the purposes of subsection (5) with

69 respect to the future advances as it does with respect to  
70 the first advance. If a commitment is made before or  
71 while the security interest is so perfected, the security  
72 interest has the same priority with respect to advances  
73 made pursuant thereto. In other cases a perfected security  
74 interest has priority from the date the advance is made.

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## CHAPTER 180

(S. B. 741—Originating in the Senate Committee on Confirmations.)

[Passed March 2, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and eleven, article one, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to expanding the membership of the veterans' council and requiring that at least one member be a veteran of World War II, at least one member be a veteran of the Korean Conflict and at least two members be veterans of the Vietnam era.

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

That sections two, three and eleven, article one, chapter nine-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 VETERANS' AFFAIRS.**

§9A-1-2. Veterans' council; administration of department.

§9A-1-3. Appointment of veterans' council members; term of office; removal.

§9A-1-11. Advisory council.

#### **§9A-1-2. Veterans' council; administration of department.**

1 There shall be a "veterans' council" which shall con-  
2 sist of seven members who shall be citizens and residents  
3 of this state, who have served in and been honorably dis-  
4 charged or separated under honorable conditions from  
5 the armed forces of the United States and whose service

6 was within a time of war as defined by the laws of the  
7 United States, either Public Law No. 2—73rd Congress  
8 or Public Law No. 346—78th Congress, and any and all  
9 amendments thereto. At least one member of the council  
10 shall be a veteran of World War II, at least one member  
11 of the council shall be a veteran of the Korean Conflict  
12 and at least two members of the council shall be veterans  
13 of the Vietnam era. The members of the veterans' council  
14 shall be selected with special reference to their ability  
15 and fitness to effectuate the purposes of this article. The  
16 West Virginia department of veterans' affairs shall be  
17 administered by a director, and such deputy directors,  
18 assistants and employees as may be deemed advisable.

**§9A-1-3. Appointment of veterans' council members; term of office; removal.**

1 The term of office of the members of the veterans'  
2 council shall be six years, and they shall be appointed by  
3 the governor by and with the advice and consent of the  
4 Senate: *Provided*, That upon the adoption of this article,  
5 the governor as aforesaid shall appoint two members  
6 for a term of two years, two members for a term of four  
7 years and one member for a term of six years, and there-  
8 after the successors of each member shall be appointed  
9 for the term of six years: *Provided, however*, That upon  
10 the expansion of the council from five to seven members,  
11 the governor shall initially appoint one new member  
12 for a term of four years and shall initially appoint the  
13 other new member for a term of six years. Thereafter the  
14 successors of these members shall be appointed for the  
15 term of six years. In case of a vacancy in the veterans'  
16 council, the appointment shall be for the remainder of the  
17 unexpired term. A member of the veterans' council shall  
18 be subject to removal by the governor for cause, but  
19 shall have upon his own request an open hearing before  
20 the governor on the complaints or charges lodged against  
21 him. The action of the governor shall be final.

**§9A-1-11. Advisory council.**

1 There is hereby established an advisory council to the  
2 West Virginia department of veterans' affairs, which

3 shall meet on the call of the chairman of the veterans'  
4 council with the veterans' council at any of its regular  
5 or special meetings, in connection with the establishment  
6 of policies and rules and regulations of the department  
7 to effectuate the purposes of this article and promote the  
8 efficient operation of the department, but the advisory  
9 council shall have no vote. The director, in carrying out  
10 his powers and duties, shall have the right to call on the  
11 individual members of the advisory council, and through  
12 them or their department, agency or organization, and  
13 also to call on such other departments or agencies of the  
14 state, as may be necessary, for advice, aid and assistance.  
15 The members of the advisory council shall be the state  
16 superintendent of free schools, commissioner of agricul-  
17 ture, adjutant general, state banking commissioner, state  
18 director of health, president of the board of regents, com-  
19 missioner of corrections, commissioner of the department  
20 of highways and the commissioner of the department of  
21 human services, or their duly authorized and accredited  
22 representatives.

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## CHAPTER 181

(H. B. 1842—By Delegate Ballouz)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the water pollution control act; permits required; transfer of permits; prior permits.

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

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

### **ARTICLE 5A. WATER POLLUTION CONTROL ACT.**

**§20-5A-7. Procedure concerning permits required under article; transfer of permits; prior permits.**

1 (a) The chief or his duly authorized representatives shall

2 conduct such investigation as is deemed necessary and proper  
3 in order to determine whether any such application should be  
4 granted or denied. In making such investigation and determina-  
5 tion as to any application pertaining solely to sewage, the  
6 chief shall consult with the director of the division of sanitary  
7 engineering of the state department of health, and in making  
8 such investigation and determination as to any application per-  
9 taining to any activity specified in subdivision (7), subsection  
10 (b), section five of this article, the chief shall consult with the  
11 director of the state geological and economic survey and the  
12 deputy director of the oil and gas division of the department of  
13 mines, and all such persons shall cooperate with the chief and  
14 assist him in carrying out the duties and responsibilities im-  
15 posed upon him under the provisions of this article and the  
16 rules and regulations of the board; such cooperation shall in-  
17 clude, but not be limited to, a written recommendation ap-  
18 proving or disapproving the granting of the permit and the  
19 reason or reasons for such recommendation, which recom-  
20 mendation and the reason or reasons therefor shall be sub-  
21 mitted to the chief within the specified time period prescribed  
22 by rules and regulations of the board.

23 (b) The department's permit shall be issued upon such  
24 reasonable terms and conditions as the chief may direct if (1)  
25 the application, together with all supporting information and  
26 data and other evidence, establishes that any and all dis-  
27 charges or releases, escapes, deposits and disposition of treated  
28 or untreated sewage, industrial wastes, or other wastes, or the  
29 effluent therefrom, resulting from the activity or activities for  
30 which the application for a permit was made will not cause  
31 pollution of the waters of this state or violate any effluent  
32 limitations or any rules and regulations of the board: *Pro-*  
33 *vided*, That the chief may issue a permit whenever in his  
34 judgment the water quality standards of the state may be  
35 best protected by the institution of a program of phased  
36 pollution abatement which under the terms of the permit may  
37 temporarily allow a limited degree of pollution of the waters  
38 of the state; and (2) in cases wherein it is required, such ap-  
39 plicant shall include the name and address of the responsible  
40 agent as set forth in section eight-b of this article.

41 (c) Each permit issued under this article shall have a fixed  
42 term not to exceed five years: *Provided*, That when the ap-  
43 plicant, in accordance with agency rules, has made a timely  
44 and complete application for permit reissuance, the permit  
45 term may be extended by the chief, at his discretion, for a  
46 period not to exceed eighteen months beyond its expiration  
47 date. Upon expiration of a permit, a new permit may be is-  
48 sued by the chief upon condition that the discharges or re-  
49 leases, escapes, deposits and disposition thereunder meet or  
50 will meet all applicable state and federal water quality stan-  
51 dards, effluent limitations and all other requirements of this  
52 article.

53 (d) An application for a permit incident to remedial action  
54 in accordance with the provisions of section eleven of this  
55 article shall be processed and decided as any other applica-  
56 tion for a permit required under the provisions of section five  
57 of this article.

58 (e) A complete application for any permit shall be acted  
59 upon by the chief, and the department's permit delivered or  
60 mailed, or a copy of any order of the chief denying any such  
61 application delivered or mailed to the applicant by the chief,  
62 within a reasonable time period as prescribed by rules and  
63 regulations of the board.

64 (f) When it is established that an application for a permit  
65 should be denied, the chief shall make and enter an order to  
66 that effect, which order shall specify the reasons for such  
67 denial, and shall cause a copy of such order to be served on  
68 the applicant by registered or certified mail. The chief shall  
69 also cause a notice to be served with a copy of such order,  
70 which notice shall advise the applicant of his right to appeal  
71 to the board by filing a notice of appeal on the form pre-  
72 scribed by the board for such purpose, with the board, in  
73 accordance with the provisions of section fifteen of this article,  
74 within thirty days after the date upon which the applicant re-  
75 ceived the copy of such order. However, an applicant may  
76 alter the plans and specifications for the proposed activity and  
77 submit a new application for any such permit, in which event  
78 the procedure hereinbefore outlined with respect to an original  
79 application shall apply.



80 (g) A permit shall be transferable to another person upon  
81 proper notification to the division and in accordance with ap-  
82 plicable regulations. Such transfer shall not become effective  
83 until it is reflected in the records of the division of water  
84 resources.

85 (h) All permits for the discharge of sewage, industrial  
86 wastes or other wastes into any waters of the state issued by  
87 the water resources board prior to July one, one thousand  
88 nine hundred sixty-four, and all permits heretofore issued  
89 under the provisions of this article, and which have not been  
90 heretofore revoked, are subject to review, revocation, suspen-  
91 sion, modification and reissuance in accordance with the  
92 terms and conditions of this article and the rules and regula-  
93 tions promulgated thereunder. Any order of revocation, sus-  
94 pension or modification made and entered pursuant to this  
95 subsection shall be upon at least twenty days notice and  
96 shall specify the reasons for such revocation, suspension or  
97 modification and the chief shall cause a copy of such order,  
98 together with a copy of a notice of the right to appeal to the  
99 board as provided for in section eight of this article, to be  
100 served upon the permit holder as specified in said section  
101 eight.

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## CHAPTER 182

(S. B. 184—By Senator Williams)

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[Passed February 15, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending the completion date for the investigation and study of commercial whitewater rafting, outfitting and activities related thereto to July one, one thousand nine hundred eighty-five.

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

That section twenty-three-a, article two, chapter twenty of the

code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. WILDLIFE RESOURCES.**

**§20-2-23a. Special studies of whitewater rafting zones to be conducted; creation of advisory commission to promulgate rules and regulations; special fees imposed; time limitation.**

1 (a) The Legislature finds that the recent increase in the  
2 number of persons engaging in the sport of whitewater  
3 rafting has resulted in overcrowding, safety and ecological  
4 problems along areas and portions of rivers and waters in  
5 this state necessitating the study, investigation and  
6 regulation of whitewater rafting to promote the safe and  
7 equitable enjoyment of this sport by all persons seeking to  
8 engage in it as recreational activity. The Legislature further  
9 finds it desirable to require the director of the department  
10 of natural resources, pending such study and investigation  
11 and the promulgation of necessary rules and regulations  
12 applicable to such areas and portions of rivers and waters,  
13 to restrict, deny or postpone the issuance of licenses to  
14 additional commercial whitewater outfitters seeking to  
15 operate in such areas and portions of rivers and waters in  
16 this state until the promulgation of such rules and  
17 regulations applicable thereto and to provide for the  
18 creation of an advisory board to promulgate such rules and  
19 regulations.

20 (b) The director shall investigate and study commercial  
21 whitewater rafting, outfitting and activities related  
22 thereto, which rafting, outfitting or activities take place  
23 along the rivers or waters of this state. The director shall  
24 designate any such rivers or waters or any portions thereof,  
25 which herein are referred to as "whitewater zones" for  
26 which commercial whitewater rafting, outfitting and  
27 activities are to be investigated and studied, and shall  
28 determine the order and periods of time within which such  
29 investigations and studies are to be conducted. The director  
30 shall first investigate and study those whitewater zones  
31 which the director finds to present serious problems  
32 requiring immediate regulation, including without

33 limitation, safety hazards and problems of overcrowding or  
34 environmental misuse.

35 (c) Upon the filing of a written notice to be entered upon  
36 the records of the department containing the designation  
37 and reasonable description of the whitewater zone to be  
38 investigated and studied pursuant to subsection (b) above,  
39 the director may not issue licenses to additional commercial  
40 whitewater outfitters seeking to operate in or for the  
41 whitewater zone described in the notice. This limitation on  
42 additional licenses shall continue until the director has  
43 completed investigation and study of the whitewater zone  
44 designated in the notice and the rules and regulations  
45 applicable to such zone are promulgated in accordance with  
46 this section: *Provided*, That the director may issue  
47 additional licenses for such whitewater zones during the  
48 study period and prior to the promulgation of the rules and  
49 regulations applicable to a zone, if the director finds that  
50 such license would not interfere with the conduct of the  
51 pending investigation and study, and the issuance of such  
52 additional license is in the best interests of persons seeking  
53 to enjoy whitewater rafting and the interests of the state in  
54 promotion of tourism and the recreational and ecological  
55 use of the state's natural resources.

56 (d) The annual license fees set forth in section twenty-  
57 six of this article for commercial whitewater outfitters and  
58 such annual fee shall be two hundred fifty dollars for each  
59 commercial whitewater outfitter. In addition to such  
60 annual license fee, each commercial whitewater outfitter,  
61 operating within a whitewater zone under investigation  
62 and study as provided in subsection (c) of this section, shall  
63 pay to the director the sum of two hundred fifty dollars as a  
64 special study fee which shall be paid within three months  
65 after the date of the notice and designation of the  
66 whitewater zone to be studied. The annual license fee and  
67 the special study fee may be used to offset and pay for the  
68 expenses and costs of such investigations and studies and  
69 the promulgation of rules and regulations pursuant to this  
70 section.

71 (e) Upon official designation by the director of the first

72 whitewater zone to be studied as provided in subsection (b)  
73 of this section, the director shall appoint a commercial  
74 whitewater advisory board. Such board shall consist of two  
75 staff employees of the department, three persons  
76 representing three different licensed commercial  
77 whitewater outfitters currently operating within the state,  
78 and three residents of the state who represent the  
79 consumers of commercial whitewater rafting in the state:  
80 *Provided*, That, for purposes of the appointment of the  
81 commercial whitewater outfitters and consumer members  
82 of the board, there shall be designated three regions within  
83 the state as follows: region one, the counties of Jackson,  
84 Roane, Calhoun, Gilmer, Lewis, Upshur, Randolph, Tucker,  
85 Barbour, Preston, Taylor, Monongalia, Marion, Harrison,  
86 Doddridge, Ritchie, Wirt, Wood, Pleasants, Tyler, Wetzel,  
87 Marshall, Ohio, Brooke and Hancock; region two, the  
88 counties of Greenbrier, Pocahontas, Pendleton, Hardy,  
89 Grant, Mineral, Hampshire, Morgan, Berkeley and  
90 Jefferson; region three, the counties of Mason, Putnam,  
91 Kanawha, Clay, Braxton, Webster, Nicholas, Fayette,  
92 Summers, Monroe, Mercer, Raleigh, Wyoming, McDowell,  
93 Mingo, Logan, Boone, Wayne, Cabell and Lincoln. The  
94 director shall appoint one member representing  
95 commercial whitewater outfitters operating in each of the  
96 three regions. The director shall likewise appoint a citizen  
97 consumer member from each of the three regions. The  
98 director shall serve as an ex officio member of the board and  
99 shall serve as chairperson at meetings.

100 (f) The commercial whitewater advisory board shall  
101 participate in the investigations and studies conducted by  
102 the director. The board shall meet upon the call of the  
103 chairperson or a majority of the members of the board and  
104 shall meet within a reasonable time after completion of the  
105 director's investigation and study relative to each  
106 designated whitewater zone. At such meetings the board  
107 shall review all data, materials and relevant findings  
108 compiled by the director relating to the investigation and  
109 study then under consideration and, as soon as practicable  
110 thereafter, the board shall promulgate rules and  
111 regulations to govern and apply to that designated  
112 whitewater zone. Such rules and regulations shall include,

113 but not be limited to, the following: (1) Minimum safety  
114 requirements for equipment; (2) criteria for increasing or  
115 limiting the number of commercial whitewater outfitters  
116 operating in whitewater zones; (3) standards for the size  
117 and number of rafts and numbers of persons transported in  
118 rafts; and (4) qualifications of guides. Board members shall  
119 be paid all reasonable and necessary expenses incurred in  
120 the exercise of their duties.

121 (g) Upon promulgation of such rules and regulations,  
122 the director shall immediately commence enforcement of  
123 the rules and regulations promulgated by the board relative  
124 to the designated whitewater zone. The promulgation of  
125 such rules and regulations and any revision thereof shall be  
126 subject to the provisions of chapter twenty-nine-a of this  
127 code.

128 (h) The director shall commence the first investigation  
129 and study no later than the first day of July, one thousand  
130 nine hundred eighty-one. All activities pursuant to all  
131 investigations and studies, or as may be required for the  
132 promulgation of rules and regulations hereunder, shall be  
133 completed no later than the first day of July, one thousand  
134 nine hundred eighty-five.

135 (i) The commercial whitewater advisory board shall  
136 terminate and cease to exist as an entity one year following  
137 a finding made by the director that all studies and  
138 investigations and the promulgation of rules and  
139 regulations applicable to the last designated whitewater  
140 zone have been completed.

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## CHAPTER 183

(H. B. 1217—By Delegate Knight and Delegate Faircloth)

[Passed March 6, 1984: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the West Virginia women's commission.

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

That section one, article twenty, 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 20. WOMEN'S COMMISSION.**

**§29-20-1. Creation; membership; appointment and terms of members; organization; reimbursement for expenses.**

1 The West Virginia commission on the status of women is  
2 hereby abolished, and there is hereby created within the  
3 office of the governor the West Virginia women's commission,  
4 to consist of seventeen members, six of whom shall be ex  
5 officio members, not entitled to vote: The attorney general,  
6 the state superintendent of schools, the commissioner of labor,  
7 the commissioner of human services, the director of the human  
8 rights commission and the director of personnel of the civil ser-  
9 vice system. Each ex officio member may designate one repre-  
10 sentative employed by his department to meet with the com-  
11 mission in his absence. The governor shall appoint the ad-  
12 ditional eleven members, by and with the advice and consent  
13 of the Senate, from among the citizens of the state. The  
14 governor shall designate the chairman and vice chairman of  
15 the commission and the commission may elect such other  
16 officers as it deems necessary. The members shall serve a  
17 term beginning the first day of July, one thousand nine  
18 hundred seventy-seven, three to serve for a term of one  
19 year, four to serve for a term of two years, and the remaining  
20 four to serve for a term of three years. The successors of  
21 the members initially appointed as provided herein, shall be  
22 appointed for a term of three years each in the same manner  
23 as the members initially appointed under this article, except  
24 that any person appointed to fill a vacancy occurring prior to  
25 the expiration of the term for which his predecessor was  
26 appointed shall be appointed for the remainder of such term.  
27 Each member shall serve until the appointment and qualifica-  
28 tion of his successor.

29 No member may receive any salary for his services, but  
30 each may be reimbursed for actual and necessary expenses  
31 incurred by him in the performance of his duties out of

32 funds received by the commission under section four of this  
33 article, except that in the event the expenses are paid, or  
34 are to be paid, by a third party, the members shall not be  
35 reimbursed by the commission.

36 After having conducted a performance and fiscal audit  
37 through its joint committee on government operations, pur-  
38 suant to section nine, article ten, chapter four of this code,  
39 the Legislature hereby finds and declares that the West Vir-  
40 ginia women's commission should be continued and reestab-  
41 lished. Accordingly, notwithstanding the provisions of section  
42 four, article ten, chapter four of this code, the West Virginia  
43 women's commission shall continue to exist until the first day  
44 of July, one thousand nine hundred ninety.

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## CHAPTER 184

(H. B. 1215—By Delegate Knight and Delegate Faircloth)

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[Passed March 6, 1984; in effect ninety days from passage. Approved by the Governor.]

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AN ACT to amend and reenact section one, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the office of workers' compensation commissioner.

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

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

### ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1. **Workers' compensation commissioner; appointment; term; oath; bond; conflict of interest; compensation; official seal; legal services; references to director deemed to mean commissioner; references to workmen's compensation deemed to mean workers' compensation.**

1 There shall be a state workers' compensation commissioner

2 who shall be appointed by the governor by and with the  
3 advice and consent of the Senate and who shall serve at  
4 the will and pleasure of the governor during the term for  
5 which the governor was elected and until the commissioner's  
6 successor has been appointed and qualified. An appoint-  
7 ment may be made to fill a vacancy or otherwise when the  
8 Senate is not in session, but shall be acted upon at the  
9 next session thereof. The person so appointed shall take  
10 the oath or affirmation prescribed by section five, article  
11 IV of the constitution, and such oath shall be certified  
12 by the person who administers the same and shall be filed  
13 in the office of the secretary of state. The person so ap-  
14 pointed shall give bond in the penalty of twenty-five thou-  
15 sand dollars conditioned for the faithful performance of the  
16 duties of this office, which bond shall be approved by the  
17 attorney general as to form, and by the governor as to  
18 sufficiency. The surety of such bond may be a bonding or  
19 surety company, in which case the premiums shall be paid  
20 out of the appropriation made for the administration of this  
21 chapter. The commissioner shall hold no position of trust  
22 or profit, or engage in any occupation or business, interfering  
23 or inconsistent with the duties as such commissioner. Not-  
24 withstanding the provisions of section two-a, article seven,  
25 chapter six of the code of West Virginia, one thousand nine  
26 hundred thirty-one, as amended, the commissioner shall receive  
27 an annual salary of twenty thousand dollars, payable out of  
28 the workers' compensation fund. The commissioner shall have  
29 an official seal for the authentication of orders and proceedings,  
30 upon which seal shall be engraved the words "West Virginia  
31 Compensation Commissioner" and such other design as the  
32 commissioner may prescribe. The courts in this state shall  
33 take judicial notice of the seal of the commissioner and in  
34 all cases copies of orders, proceedings or records in the  
35 office of the West Virginia compensation commissioner shall  
36 be equal to the original in evidence.

37 The attorney general shall perform all legal services re-  
38 quired by the commissioner under the provisions of this  
39 chapter: *Provided*, That in any case in which an application  
40 for review is prosecuted from any final decision of the



41 workers' compensation appeal board to the supreme court of  
42 appeals, as provided by section four, article five of this  
43 chapter, or in any court proceeding before the workers'  
44 compensation appeal board, in which such representation  
45 shall appear to the commissioner to be desirable, the com-  
46 missioner may designate a regular employee of this of-  
47 fice, qualified to practice before such court to represent  
48 the commissioner upon such appeal or proceeding, and in no  
49 case shall the person so appearing for the commissioner  
50 before the court receive remuneration therefor other than  
51 such person's regular salary.

52 Whenever in this chapter or elsewhere in law reference is  
53 made to "state director of workmen's compensation" or  
54 "compensation commissioner" such reference shall henceforth  
55 be construed and understood to mean "state workers' com-  
56 pension commissioner."

57 Whenever in this chapter or elsewhere in law reference  
58 is made to the term "workmen's compensation" or reference is  
59 made to the "workmen's compensation advisory board,"  
60 "workmen's compensation fund," "disabled workmen's relief  
61 fund" and "workmen's compensation appeal board," such  
62 references to and the titles of each such board or fund  
63 shall henceforth be construed to mean, and shall be defined  
64 to mean, respectively "workers' compensation," "workers'  
65 compensation advisory board," "workers' compensation fund,"  
66 "disabled workers' relief fund" and "workers' compensation  
67 appeal board."

68 After having conducted a performance and fiscal audit  
69 through its joint committee on government operations, pur-  
70 suant to section nine, article ten, chapter four of this code,  
71 the Legislature hereby finds and declares that the office of  
72 workers' compensation commissioner should be continued  
73 and reestablished. Accordingly, notwithstanding the pro-  
74 visions of section four, article ten, chapter four of this code,  
75 the office of workers' compensation commissioner shall con-  
76 tinue to exist until the first day of July, one thousand nine  
77 hundred ninety.

## CHAPTER 185

(Com. Sub. for H. B. 1962—By Mr. Speaker, Mr. See)

[Passed March 10, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, one-b, five, five-a, nine and thirteen, article two; and section one, article three, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to workers' compensation; employers and employees subject to the provisions of workers' compensation statutes in this code; special premium rates for employee officers of associations or corporations, members of partnerships and owners of sole proprietorships electing coverage under the workers' compensation statutes; applications to be filed by subscribing employers; premium rates and premium deposits; premium payments and payroll reports to be submitted; delinquent accounts; notice of delinquency by commissioner; failure to resolve delinquency and resulting default; reinstatement of defaulting employer; applications for reinstatement; administrative hearings on such applications; cause of actions accruing during periods of delinquency; withdrawal or termination of coverage; notice to employees of employer's delinquency, default, withdrawal or termination; criminal penalties for removal of posted notice to employees; posting of such notices by officials authorized to serve civil process; collection of premiums from defaulting employers by civil suits, liens and injunctions; the withholding of certificates of dissolution or withdrawal in cases of defaulting employers; self insured employers; dates such self insurers must file statements of earnings and make payments; rates of interest to be charged on unpaid payments; maximum rate of interest to be charged against unpaid payments of certain employers; workers' compensation fund; surplus fund; rates of contribution to the surplus funds; and definitions of certain terms relating to the surplus fund.

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

That sections one, one-b, five, five-a, nine and thirteen, article two, and section one, article three, chapter twenty-three of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**Article**

2. **Employers and Employees Subject to Chapter; Extraterritorial Coverage.**
3. **Workers' Compensation Fund.**

**ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER;  
EXTRATERRITORIAL COVERAGE.**

- §23-2-1. Employers subject to chapter.
- §23-2-1b. Special provisions as to premiums.
- §23-2-5. Application; payment of premiums; payroll reports; premium deposits; delinquency; default; reinstatement; payment of benefits; notice to employees.
- §23-2-5a. Collection of premiums from defaulting employers; civil remedies; injunctive relief; secretary of state to withhold certificates of dissolution.
- §23-2-9. Election of employer to provide own system of compensation.
- §23-2-13. Interest on past due payments.

**§23-2-1. Employers subject to chapter.**

1 The state of West Virginia and all governmental agencies or  
2 departments created by it, including county boards of educa-  
3 tion, political subdivisions of the state, any volunteer fire  
4 department or company and other emergency service organi-  
5 zations as defined by article five, chapter fifteen of this code,  
6 and all persons, firms, associations and corporations regularly  
7 employing another person or persons for the purpose of carry-  
8 ing on any form of industry, service or business in this state,  
9 are employers within the meaning of this chapter and are  
10 hereby required to subscribe to and pay premiums into the  
11 workers' compensation fund for the protection of their em-  
12 ployees and shall be subject to all requirements of this chap-  
13 ter and all rules and regulations prescribed by the commis-  
14 sioner with reference to rate, classification and premium pay-  
15 ment, provided that such rates will be adjusted by the com-  
16 missioner to reflect the demand on the compensation fund by  
17 the covered employer.

18 The following employers are not required to subscribe to  
19 the fund, but may elect to do so:

- 20 (1) Employers of employees in domestic services; or

21 (2) Employers of five or fewer full-time employees in agri-  
22 cultural service; or

23 (3) Employers of employees while said employees are em-  
24 ployed without the state except in cases of temporary em-  
25 ployment without the state; or

26 (4) Casual employers. An employer is deemed to be a cas-  
27 ual employer when the number of his employees does not ex-  
28 ceed three and the period of employment is temporary, inter-  
29 mittent and sporadic in nature and does not exceed ten cal-  
30 endar days in any calendar quarter;

31 (5) Churches;

32 (6) Employers engaged in organized professional sports  
33 activities, including employers of trainers and jockeys engaged  
34 in thoroughbred horse racing; or

35 (7) Employers of employees who are officers of and stock-  
36 holders in a corporation qualifying for special tax treatment  
37 under subchapter S of the Internal Revenue Code of the United  
38 States.

39 If an employer is a partnership, or sole proprietorship, such  
40 employer may elect to include as an "employee" within this  
41 chapter, any member of such partnership, or the owner of the  
42 sole proprietorship. In the event of such election, the employer  
43 shall serve upon the commissioner written notice naming the  
44 persons to be covered and shall include such "employee's" re-  
45 munerations for premium purposes in all future payroll reports,  
46 and no such partner, or proprietor shall be deemed an em-  
47 ployee within the meaning of this chapter until such notice has  
48 been served.

49 Notwithstanding any other provision of this chapter to the  
50 contrary, whenever there are churches in a circuit which em-  
51 ploy one individual clergyman and the payments to such clergy-  
52 man from such churches constitute his full salary, such circuit  
53 or group of churches may elect to be considered a single em-  
54 ployer for the purposes of premium payment into the workers'  
55 compensation fund.

56 Employers who are not required to subscribe to the workers'

57 compensation fund may voluntarily choose to subscribe to and  
58 pay premiums into the fund for the protection of their em-  
59 ployees and in such case shall be subject to all requirements  
60 of this chapter and all rules and regulations prescribed by the  
61 commissioner with reference to rates, classifications and pre-  
62 mium payments and shall afford to them the protection of this  
63 chapter, including section six of this article, but the failure of  
64 such employers to choose to subscribe to and to pay premiums  
65 into the fund shall not impose any liability upon them other  
66 than such liability as would exist notwithstanding the provi-  
67 sions of this chapter.

68 Any foreign corporation employer whose employment in  
69 this state is to be for a definite or limited period which could  
70 not be considered "regularly employing" within the meaning of  
71 this section may choose to pay into the workers' compensation  
72 fund the premiums herein provided for, and at the time of mak-  
73 ing application to the commissioner, such employer shall fur-  
74 nish a statement under oath showing the probable length of  
75 time the employment will continue in this state, the character  
76 of the work, an estimate of the monthly payroll and any other  
77 information which may be required by the commissioner. At  
78 the time of making application such employer shall deposit  
79 with the state compensation commissioner to the credit of the  
80 workers' compensation fund the amount required by section  
81 five of this article, which amount shall be returned to the em-  
82 ployer if his application be rejected by the commissioner. Up-  
83 on notice to such employer of the acceptance of his application  
84 by the commissioner, he shall be an employer within the mean-  
85 ing of this chapter and subject to all of its provisions.

86 Any foreign corporation employer choosing to comply with  
87 the provisions of this chapter and to receive the benefits here-  
88 under shall, at the time of making application to the commis-  
89 sioner, in addition to other requirements of this chapter, fur-  
90 nish such commissioner with a certificate from the secretary of  
91 state, where such certificate is necessary, showing that it has  
92 complied with all the requirements necessary to enable it  
93 legally to do business in this state and no application of such  
94 foreign corporation employer shall be accepted by the com-  
95 missioner until such certificate is filed.

**§23-2-1b. Special provisions as to premiums.**

1 Every executive officer of an association or of a corporation  
2 defined as an employee elsewhere in this chapter, and any  
3 member of a partnership or owner of a sole proprietorship  
4 which has elected coverage under this chapter for such member  
5 or owner shall pay premiums based upon the actual salary  
6 paid to such employee up to an amount sufficient to qualify  
7 such employee to receive the maximum level of benefits, but in  
8 no event shall the basis for premium be less than the salary  
9 necessary to provide such employee with the minimum level  
10 of benefits.

11 The premium and actual expenses in connection with gov-  
12 ernmental agencies and departments of the state of West Vir-  
13 ginia shall be paid out of the state treasury from appropri-  
14 ations made for such agencies and departments, in the same  
15 manner as other disbursements are made by such agencies and  
16 departments.

17 County commissions, municipalities, other political subdi-  
18 visions of the state, county boards of education, emergency  
19 service organizations organized as aforesaid and volunteer fire  
20 departments or companies shall provide for the funds to pay  
21 their prescribed premiums into the fund and such premiums  
22 and premiums of state agencies and departments, including  
23 county boards of education, shall be paid into the fund in the  
24 same manner as herein provided for other employers subject  
25 to this chapter.

26 County commissions and municipalities are hereby autho-  
27 rized to pay all or any part of the premiums prescribed for such  
28 emergency service organizations organized as aforesaid and  
29 such duly incorporated volunteer fire departments or com-  
30 panies as may provide services within the county or munic-  
31 ipality.

**§23-2-5. Application; payment of premiums; payroll reports; pre-  
mium deposits; delinquency; default; reinstatement;  
payment of benefits; notice to employees.**

1 (a) For the purpose of creating a workers' compensation  
2 fund each employer who is required to subscribe to the fund

3 or who elects to subscribe to the fund, shall pay premiums  
4 calculated as a percentage of the employer's payroll at the  
5 rate determined by the commissioner and then in effect. At  
6 the time each employer subscribes to the fund, the applica-  
7 tion required by the commissioner shall be filed and a pre-  
8 mium deposit equal to the first quarter's estimated premium  
9 payment shall be remitted. The minimum quarterly premium  
10 to be paid by any employer shall be ten dollars.

11 Thereafter, premiums shall be paid quarterly on or before  
12 the last day of the month following the end of the quarter,  
13 and shall be the prescribed percentage of the total earnings of  
14 all employees during the preceding quarter.

15 At the time each premium is paid, every subscribing em-  
16 ployer shall make a payroll report to the commissioner for  
17 the preceding quarter. The report shall be on the form or  
18 forms prescribed by the commissioner, and shall contain all  
19 information required by the commissioner.

20 After subscribing to the fund, each employer shall remit  
21 with each payroll report and premium payment, an amount  
22 calculated to be sufficient to maintain a premium deposit equal  
23 to the previous quarter's premium payment: *Provided*, That  
24 the commissioner may reduce the amount of the premium  
25 deposit required from seasonal employers for those quarters  
26 during which employment is significantly reduced. The pre-  
27 mium deposit shall be credited to the employer's account on  
28 the books of the commissioner and used to pay premiums  
29 and any other sums due the fund when an employer becomes  
30 delinquent.

31 All premiums and premium deposits required to be paid by  
32 this chapter shall be paid by the employers to the workers'  
33 compensation commissioner, who shall maintain record of all  
34 sums so received. All sums received by the commissioner  
35 shall be deposited in the state treasury to the credit of the  
36 workers' compensation fund in the manner now prescribed  
37 by law.

38 (b) Failure of an employer to timely pay premium, to  
39 timely file a payroll report, or to maintain an adequate pre-  
40 mium deposit, shall cause the employer's account to become

41 delinquent. The commissioner shall, in writing, within sixty  
42 days of the end of each quarter notify all delinquent em-  
43 ployers of their failure to timely pay premiums, to timely  
44 file a payroll report, or to maintain an adequate premium de-  
45 posit. The notification shall demand the filing of the delin-  
46 quent payroll report and payment of delinquent premium,  
47 and/or payment of an amount sufficient to maintain the  
48 premium deposit, before the end of the third month following  
49 the end of the preceding quarter. The notification shall also  
50 require payment of interest on the delinquent premium pay-  
51 ment and/or premium deposit pursuant to section thirteen of  
52 this article.

53 (c) Whenever the commissioner notifies an employer of the  
54 delinquent status of his account, the notification shall explain  
55 the legal consequence of subsequent default by employers  
56 required to subscribe to the fund, and the effects of termina-  
57 tion of any electing employer's account.

58 (d) Failure by the employer, who is required to subscribe  
59 to the fund and who fails to resolve his delinquency within the  
60 prescribed period, shall place the account in default and shall  
61 deprive such defaulting employer of the benefits and pro-  
62 tection afforded by this chapter including section six of this  
63 article, and he shall be liable as provided in section eight of  
64 this article. The defaulting employer's liability under section  
65 eight of this article shall be retroactive to twelve o'clock,  
66 p.m., of the last day of the month following the end of the  
67 quarter for which the delinquency occurs. The commissioner  
68 shall notify the defaulting employer of the method by which  
69 the employer may be reinstated with the fund. The commis-  
70 sioner shall also notify the employees of such employer by  
71 written notice as hereinafter provided for in this section.

72 (e) Failure by any employer, who voluntarily elects to  
73 subscribe, to resolve his delinquency within the prescribed  
74 period, shall automatically terminate the election of such  
75 employer to pay into the workers' compensation fund and  
76 shall deprive such delinquent employer of the benefits and  
77 protection afforded by this chapter including section six of  
78 this article, and he shall be liable as provided in section  
79 eight of this article. The defaulting employer's liability under



80 section eight of this article shall be retroactive to twelve o'clock  
81 p.m., of the last day of the month following the end of the  
82 quarter for which the delinquency occurs.

83 (f) Any employer, who is required to subscribe to the fund  
84 and subsequently defaults, or who elects to subscribe and  
85 subsequently his account is terminated, shall be restored im-  
86 mediately to the benefits and protection of this chapter only  
87 upon the filing of all delinquent payroll and other reports  
88 required by the commissioner and payment into the fund of  
89 all unpaid premiums, an adequate premium deposit, accrued  
90 interest and claims losses paid during the period of delinquency  
91 and default: *Provided*, That the commissioner shall, upon  
92 written application for reinstatement filed by an employer,  
93 order that an administrative hearing be held prior to rein-  
94 statement to determine the terms of repayment of all delin-  
95 quent premiums, premium deposits and accrued interest, and  
96 the extent to which claims losses may be waived, equitably  
97 considering, (1) the exact nature of the default, (2) the  
98 amount of the claims losses, (3) the solvency of the fund,  
99 (4) the financial condition of the employer, (5) the degree of  
100 willfulness exhibited by the employer's conduct resulting  
101 in the default, and (6) the potential economic impact upon  
102 the state and the specific geographic area in which the em-  
103 ployer is located, if the employer should cease operations.  
104 Any such administrative hearing shall be conducted pursuant  
105 to article five, chapter twenty-nine-a of this code: *Provided*,  
106 That the authority of the commissioner to waive claims losses  
107 or to restore any employer in default to the benefits of this  
108 chapter prior to payment in full of all delinquent premiums,  
109 premium deposits and accrued interest shall expire on the first  
110 day of July, one thousand nine hundred eighty-six, and the  
111 commissioner shall report to the Legislature, on or before the  
112 first day of January, one thousand nine hundred eighty-five  
113 and one thousand nine hundred eighty-six, on the terms of  
114 reinstatement of defaulting employers and any costs to the  
115 fund.

116 Applications for reinstatement shall: (1) Be made upon  
117 forms prescribed by the commissioner; (2) include a report of  
118 the gross payroll of the employer during the entire period of

119 default, which payroll information shall be verified by the  
120 employer or its authorized agent; and (3) include a payment  
121 equal to one half of one percent of the gross payroll reported  
122 during the period of default, or one hundred dollars, whichever  
123 amount shall be greater. An employer who applies for rein-  
124 statement shall be entitled to the benefits and protection of  
125 this chapter on the day the application is received by the  
126 commissioner: *Provided*, That if the commissioner reinstates  
127 an employer subject to the terms of a repayment agreement,  
128 the subsequent failure of the employer to make scheduled pay-  
129 ments in accordance with the repayment agreement, to timely  
130 file current premiums or to restore the premium deposit to  
131 the required amount by the end of the repayment period  
132 shall cause the repayment agreement to be null, void and  
133 of no effect, and the employer shall be denied the benefits  
134 and protection of this chapter effective from the date that  
135 such employer's account originally became delinquent.

136 (g) No employee of an employer required by this chapter  
137 to subscribe to the workers' compensation fund shall be denied  
138 benefits provided by this chapter because the employer failed  
139 to subscribe or because the employer's account is either  
140 delinquent or in default.

141 (h) The provisions of this section shall not deprive any  
142 individual of any cause of action which has accrued as a  
143 result of an injury or death which occurred during any period  
144 of delinquency not resolved in accordance with the provisions  
145 of this article, or subsequent failure to comply with the  
146 terms of the repayment agreement.

147 Upon withdrawal from the fund or termination of election  
148 of any employer, he shall be refunded the balance due him of  
149 his deposit, after deducting all amounts owed by him to the  
150 workers' compensation fund, and the commissioner shall  
151 notify the employees of such employer of said termination  
152 in such manner as he may deem best and sufficient.

153 Notice to employees in this section provided for shall be  
154 given by posting written notice that the employer is delinquent  
155 under the compensation law of West Virginia, and in the case  
156 of employers required by this chapter to subscribe and pay

157 premiums to the fund, that the delinquent employer is liable  
158 to his employees for injury or death, both in workers' com-  
159 pensation benefits and in damages at common law or by  
160 statute; and, in the case of employers not required by this  
161 chapter to subscribe and pay premiums to the fund, but  
162 voluntarily electing to do so as herein provided, that neither  
163 the employer nor the employees of such employer are pro-  
164 tected by said laws as to any injury or death sustained after  
165 the date specified in said notice. Such notice shall be in the  
166 form prescribed by the commissioner and shall be posted  
167 in a conspicuous place at the chief works of the employer,  
168 as the same appear in records of the commissioner. If the  
169 said chief works of the employer cannot be found or identi-  
170 fied, then said notices shall be posted at the front door of the  
171 courthouse of the county in which said chief works are located,  
172 according to the records in the commissioner's office. Any  
173 person who shall, prior to the reinstatement of the said em-  
174 ployer, as hereinbefore provided for, or prior to sixty days  
175 after the posting of said notice, whichever shall first occur,  
176 remove, deface or render illegible the said notice, shall be  
177 guilty of a misdemeanor, and, upon conviction thereof, shall  
178 be fined not to exceed five hundred dollars, and the said  
179 notice shall state this provision upon its face. The commis-  
180 sioner may require any sheriff, deputy sheriff, constable or  
181 other official of the state of West Virginia, who may be autho-  
182 rized to serve civil process, to post such notice and to make  
183 return thereof of the fact of such posting to the commissioner,  
184 and any failure of such officer to post any notice within ten  
185 days after he shall have received the same from the com-  
186 missioner, without just cause or excuse, shall constitute a  
187 willful failure or refusal to perform a duty required of him by  
188 law within the meaning of section twenty-eight, article five,  
189 chapter sixty-one of this code. Any person actually injured  
190 by reason of such failure shall have an action against said  
191 official, and upon any official bond he may have given, for  
192 such damages as such person may actually have incurred, but  
193 not to exceed, in the case of any surety upon said bond, the  
194 amount of the penalty of said bond. Any official posting  
195 said notice as herein required shall be entitled to the same  
196 fee as is now or may hereafter be provided for the service of

197 process in suits instituted in courts of record in the state of  
198 West Virginia, which fee shall be paid by the commissioner  
199 out of any funds at his disposal, but shall be charged by him  
200 against the account of the employer to whose delinquency such  
201 notice relates.

**§23-2-5a. Collection of premiums from defaulting employers;  
civil remedies; injunctive relief; secretary of state to  
withhold certificates of dissolution.**

1 The commissioner in the name of the state may com-  
2 mence a civil action against an employer who, after due notice,  
3 defaults in any payment required by this chapter. If judgment  
4 is against the employer he shall pay the costs of the action.  
5 Civil action under this section shall be given preference on the  
6 calendar of the court over all other civil actions.

7 Any payment and interest thereon due and unpaid under  
8 this chapter shall be a personal obligation of the employer  
9 and shall, in addition thereto, be a lien enforceable against all  
10 the property of the employer: *Provided*, That no such lien  
11 shall be enforceable as against a purchaser (including a lien  
12 creditor) of real estate or personal property for a valuable  
13 consideration without notice, unless docketed as provided in  
14 chapter ninety-nine, acts of the Legislature, regular session,  
15 one thousand nine hundred forty-three.

16 In addition to all other civil remedies prescribed herein  
17 the commissioner may in the name of the state distrain upon  
18 any personal property, including intangible property, of any  
19 employer delinquent for any payment and interest thereon. If  
20 the commissioner has good reason to believe that such prop-  
21 erty or a substantial portion thereof is about to be removed  
22 from the county in which it is situated, he may likewise dis-  
23 train in the name of the state before such delinquency occurs.  
24 For such purpose, the commissioner may require the services  
25 of a sheriff of any county in the state in levying such distress  
26 in the county in which the sheriff is an officer and in which  
27 such personal property is situated. A sheriff so collecting any  
28 payments and interest thereon shall be entitled to such com-  
29 pensation as is provided by law for his services in the levy  
30 and enforcement of executions.

31 In case a business subject to the payments and interest  
32 thereon imposed under this chapter shall be operated in con-  
33 nection with a receivership or insolvency proceeding in any  
34 state court in this state, the court under whose direction such  
35 business is operated shall, by the entry of a proper order or  
36 decree in the cause, make provisions, so far as the assets in  
37 administration will permit, for the regular payment of such  
38 payments as the same become due.

39 The secretary of state of this state shall withhold the is-  
40 suance of any certificate of dissolution or withdrawal in the  
41 case of any corporation organized under the laws of this state  
42 or organized under the laws of any other state and admitted  
43 to do business in this state, until notified by the commissioner  
44 that all payments and interest thereon against any such cor-  
45 poration which is an employer under this chapter have been  
46 paid or that provision satisfactory to the commissioner has  
47 been made for payment.

48 In any case when an employer required to subscribe to the  
49 fund defaults in payments of premium, premium deposit, or  
50 interest thereon, for as many as two calendar quarters, which  
51 quarters need not be consecutive, and remains in default after  
52 due notice, and the commissioner has been unable to collect  
53 such payments by any of the other civil remedies prescribed  
54 herein, the commissioner may bring action in the circuit  
55 court of Kanawha County to enjoin such employer from con-  
56 tinuing to carry on the business in which such liability was  
57 incurred: *Provided*, That the commissioner may as an alter-  
58 native to this action require such delinquent employer to file  
59 a bond in the form prescribed by the commissioner with satis-  
60 factory surety in an amount not less than fifty percent more  
61 than the payments and interest due.

**§23-2-9. Election of employer to provide own system of compen-  
pensation.**

1 Notwithstanding anything contained in this chapter, em-  
2 ployers subject to this chapter who are of sufficient financial  
3 responsibility to ensure the payment of compensation to injured  
4 employees and the dependents of fatally injured employees,  
5 whether in the form of pecuniary compensation or medical

6 attention, funeral expenses or otherwise as herein provided, of  
7 the value at least equal to the compensation provided in this  
8 chapter, or employers of such financial responsibility who  
9 maintain their own benefit funds, or system of compensation  
10 to which their employees are not required or permitted to  
11 contribute, or such employers as shall furnish bond or other  
12 security to ensure such payments, may, upon a finding of such  
13 facts by the compensation commissioner, elect to pay individ-  
14 ually and directly, or from such benefit funds, department or  
15 association, such compensation and expenses to injured em-  
16 ployees or fatally injured employees' dependents. The compen-  
17 sation commissioner shall require security or bond from such  
18 employer, to be approved by him, and of such amount as  
19 is by him considered adequate and sufficient to compel or  
20 secure to such employees, or their dependents, payment of the  
21 compensation and expenses herein provided for, which shall  
22 in no event be less than the compensation paid or furnished  
23 out of the state workers' compensation fund in similar cases  
24 to injured employees or the dependents of fatally injured em-  
25 ployees whose employers contribute to such fund. Any em-  
26 ployer electing under this section shall on or before the last  
27 day of the first month of each quarter, for the preceding quar-  
28 ter, file with the commissioner a sworn statement of the total  
29 earnings of all of his employees subject to this chapter for  
30 such preceding quarter, and shall pay into the workers' com-  
31 pensation fund a sum sufficient to pay his proper proportion of  
32 the expenses of the administration of this chapter, and a sum  
33 sufficient to pay his proper portion of the expenses for claims  
34 for those employers who are delinquent in the payment of  
35 premiums, and a sum sufficient to pay his fair portion of the  
36 expenses of the disabled workers' relief fund, as may be  
37 determined by the commissioner. The commissioner shall make  
38 and publish rules and regulations governing the mode and  
39 manner of making application, and the nature and extent of  
40 the proof required to justify the finding of facts by the com-  
41 missioner, to consider and pass upon such election by employ-  
42 ers subject to this chapter, which rules and regulations shall be  
43 general in their application. Any employer subject to this  
44 chapter who shall elect to carry his own risk and who has  
45 complied with the requirements of this section and the rules

46 of the compensation commissioner shall not be liable to re-  
47 spond in damages at common law or by statute for the injury  
48 or death of any employee, however occurring, after such elec-  
49 tion and during the period that he is allowed by the commis-  
50 sioner to carry his own risk.

51 Any employer whose record upon the books of the compen-  
52 sation commissioner shows a liability against the workers'  
53 compensation fund incurred on account of injury to or death  
54 of any of his employees, in excess of premiums paid by such  
55 employer, shall not be granted the right, individually and di-  
56 rectly or from such benefit funds, department or association,  
57 to compensate his injured employees and the dependents of his  
58 fatally injured employees until he has paid into the workers'  
59 compensation fund the amount of such excess of liability over  
60 premiums paid, including his proper proportion of the liability  
61 incurred on account of explosions, catastrophes or second in-  
62 juries as defined in section one, article three of this chapter,  
63 occurring within the state and charged against such fund.

64 All employers who have heretofore elected, or shall here-  
65 after elect, to pay compensation and expenses directly as pro-  
66 vided in this section, shall unless they give the catastrophe  
67 and second injury security or bond hereinafter provided for,  
68 pay into the surplus fund referred to in section one, article  
69 three of this chapter, upon the same basis and in the same  
70 percentages, subject to the limitations herein set forth, as funds  
71 are set aside for the maintenance of the surplus fund out of  
72 payments made by premium-paying subscribers, such payments  
73 to be made at the same time as hereinbefore provided with re-  
74 spect to payment of proportion of expenses of administration.  
75 In case there be a catastrophe or second injury, as defined in  
76 section one, article three of this chapter, to the employees of  
77 any employer making such payments, the employer shall not  
78 be liable to pay compensation or expenses arising from or  
79 necessitated by the catastrophe or second injury, and such  
80 compensation and expenses shall not be charged against such  
81 employer, but such compensation and expenses shall be paid  
82 from the surplus fund in the same manner and to the same  
83 extent as in the case of premium-paying subscribers.

84 If an employer elect to make payments into the surplus fund  
85 as aforesaid, then the bond or other security required by this  
86 section shall be of such amount as the commissioner considers  
87 adequate and sufficient to compel or secure to the employees  
88 or their dependents payments of compensation and expenses,  
89 except any compensation and expenses that may arise from, or  
90 be necessitated by, any catastrophe or second injury, as de-  
91 fined in section one, article three of this chapter, which last  
92 are secured by and shall be paid from the surplus fund as  
93 hereinbefore provided.

94 If any employer elect not to make payments into the surplus  
95 fund, as hereinbefore provided, then, in addition to bond or  
96 security in the amount hereinbefore set forth, such employer  
97 shall furnish catastrophe and second injury security or bond,  
98 approved by the commissioner, in such additional amount as  
99 the commissioner shall consider adequate and sufficient to  
100 compel or secure payment of all compensation and expenses  
101 arising from, or necessitated by, any catastrophe or second in-  
102 jury that might thereafter ensue.

103 All employers hereafter making application to carry their  
104 own risk under the provisions of this section, shall with such  
105 application, make a written statement as to whether such em-  
106 ployer elects to make payments as aforesaid into the surplus  
107 fund or not to make such payments and to give catastrophe  
108 and second injury security or bond hereinbefore in such case  
109 provided for.

110 All employers who have heretofore elected to carry their own  
111 risk under the provisions of this section shall be deemed to  
112 have elected to make payments into the surplus fund unless,  
113 within thirty days after the effective date of this act, they notify  
114 the commissioner in writing to the contrary: *Provided*, That  
115 such employers, as have heretofore elected, under the rules  
116 heretofore promulgated by the commissioner, not to make  
117 payments into the surplus fund, shall be deemed to have  
118 elected to give the catastrophe and second injury security or  
119 bond hereinbefore provided for and not to make payments in-  
120 to the surplus fund. Any catastrophe and second injury secur-  
121 ity or bond heretofore given under rules and regulations pro-



122 mulgated by the commissioner and approved by him shall be  
123 valid under this section, and any election heretofore made un-  
124 der rules and regulations of the commissioner to make pay-  
125 ments into the surplus fund shall be valid and protective to  
126 the person so electing from and after the date of such election.

127 In any case under the provisions of this section that shall  
128 require the payment of compensation or benefits by an em-  
129 ployer in periodical payments, and the nature of the case  
130 makes it possible to compute the present value of all future  
131 payments, the commissioner may, in his discretion, at any  
132 time compute and permit or require to be paid into the workers'  
133 compensation fund an amount equal to the present value of  
134 all unpaid compensation for which liability exists, in trust; and  
135 thereupon such employer shall be discharged from any further  
136 liability upon such award, and payment of the same shall be  
137 assumed by the workers' compensation fund.

**§23-2-13. Interest on past due payments.**

1 Payments unpaid on the date on which due and payable,  
2 as prescribed by the commissioner, shall immediately begin  
3 bearing interest at the rate of two percentage points above the  
4 prime rate as listed in the guide to general levels of money  
5 rates in the first New York edition of the *Wall Street Journal*  
6 published in the month during which such payments were due.  
7 Interest shall be compounded quarterly until payment plus  
8 accrued interest is received by the commissioner. This in-  
9 terest rate shall be in effect for the remainder of the quarter  
10 during which the premium payment is due. The interest  
11 rate shall be redetermined quarterly in accordance with this  
12 section. Interest collected pursuant to this section shall be  
13 paid into the workers' compensation fund: *Provided*, That in  
14 no event shall the rate of interest charged a political sub-  
15 division of the state or a volunteer fire department pursuant  
16 to this section exceed ten percent per annum.

**ARTICLE 3. WORKERS' COMPENSATION FUND.**

**§23-3-1. Compensation fund; surplus fund; catastrophe and catastrophe payment defined; second injury and second injury reserve; compensation by employers.**

1 The commissioner shall establish a workers' compensation

2 fund from the premiums and other funds paid thereto by  
3 employers, as herein provided, for the benefit of employees of  
4 employers who have paid the premiums applicable to such  
5 employers and have otherwise complied fully with the pro-  
6 visions of section five, article two of this chapter, and for  
7 the benefit, to the extent elsewhere in this chapter set out,  
8 of employees of employers who have elected, under section  
9 nine, article two of this chapter, to make payments into the  
10 surplus fund hereinafter provided for, and for the benefit of  
11 the dependents of all such employees, and for the payment of  
12 the administration expenses of this chapter and shall adopt  
13 rules and regulations with respect to the collection, mainten-  
14 ance and disbursement of such fund not in conflict with the  
15 provisions of this chapter.

16 A portion of all premiums that shall be paid into the work-  
17 ers' compensation fund by subscribers not electing to carry  
18 their own risk under section nine, article two of this chapter,  
19 shall be set aside to create and maintain a surplus fund  
20 to cover the catastrophe hazard, the second injury hazard,  
21 and all losses not otherwise specifically provided for in this  
22 chapter. The percentage to be set aside shall be determined  
23 by the commissioner as necessary to maintain a solvent sur-  
24 plus fund. All interest earned on investments by the workers'  
25 compensation fund, which is attributable to the surplus fund,  
26 shall be credited to the surplus fund.

27 A catastrophe is hereby defined as an accident in which  
28 three or more employees are killed or receive injuries, which,  
29 in the case of each individual, consist of: Loss of both eyes  
30 or the sight thereof; or loss of both hands or the use thereof;  
31 or loss of both feet or the use thereof; or loss of one hand  
32 and one foot or the use thereof. The aggregate of all medical  
33 and hospital bills and other costs, and all benefits payable  
34 on account of a catastrophe is hereby defined as "catastrophe  
35 payment." In case of a catastrophe to the employees of an  
36 employer who is an ordinary premium-paying subscriber  
37 to the fund, or to the employees of an employer who, having  
38 elected to carry his own risk under section nine, article two  
39 of this chapter, has heretofore elected, or may hereafter elect,

40 to pay into the surplus fund under the provisions of that sec-  
41 tion, then the catastrophe payment arising from such catas-  
42 trophe shall not be charged against, or paid by, such employer  
43 but shall be paid from the surplus fund.

44 If an employee who has a definitely ascertainable physical  
45 impairment, caused by a previous injury, irrespective of its  
46 compensability, becomes permanently and totally disabled  
47 through the combined effect of such previous injury and a  
48 second injury received in the course of and as a result of  
49 his employment, the employer shall be chargeable only  
50 for the compensation payable for such second injury: *Provided*,  
51 That in addition to such compensation, and after the  
52 completion of the payments therefor, the employee shall  
53 be paid the remainder of the compensation that would be  
54 due for permanent total disability out of a special reserve of  
55 the surplus fund known as the second injury reserve, created  
56 in the manner hereinbefore set forth.

57 If an employee of an employer, who having elected to carry  
58 his own risk under section nine, article two of this chapter,  
59 and who has not elected to pay into the surplus fund under  
60 the provisions of that section, who has a definitely ascertain-  
61 able physical impairment caused by a previous injury, ir-  
62 respective of its compensability, and becomes permanently and  
63 totally disabled from the combined effect of such previous  
64 injury and a second injury received in the course of and as a  
65 result of his employment, the employee shall be granted an  
66 award of total permanent disability and his employer shall,  
67 upon order of the commissioner, compensate the said em-  
68 ployee in the same manner as if the total permanent disability  
69 of the employee had resulted from a single injury while in  
70 the employ of such employer.

71 Employers electing, as herein provided, to compensate in-  
72 dividually and directly their injured employees and their  
73 fatally injured employees' dependents shall do so in the man-  
74 ner prescribed by the commissioner, and shall make all reports  
75 and execute all blanks, forms and papers as directed by the  
76 commissioner, and as provided in this chapter.

## CHAPTER 186

(Com. Sub. for H. B. 1336—By Delegate Murphy)

[Passed March 8, 1984; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter one hundred seventy-eight, acts of the Legislature, regular session, one thousand nine hundred forty-seven, relating to the composition of the board of directors of the Morgan County war memorial hospital.

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

That section two, chapter one hundred seventy-eight, acts of the Legislature, regular session, one thousand nine hundred forty-seven, as amended, be amended and reenacted to read as follows:

### **WAR MEMORIAL HOSPITAL TO THE VETERANS OF THE WORLD WARS FROM MORGAN COUNTY.**

#### **§2. Board of directors.**

1 The board of directors of the Morgan County war memorial  
2 hospital shall be appointed by the Morgan County commission  
3 and shall be comprised of not more than four members ap-  
4 pointed from each of the magisterial districts of the county,  
5 the president of the hospital medical staff, who shall be  
6 a voting member, and the hospital administrator or superin-  
7 tendent, who shall be an ex officio member without voting  
8 authority. The citizen members appointed from the magisterial  
9 districts of the county shall be residents of the magisterial  
10 districts from which they are appointed and shall serve for  
11 terms of three years from the first day of July following  
12 their appointment, except that effective the first day of July,  
13 one thousand nine hundred eighty-four, one member from each  
14 magisterial district shall be appointed for one year, one member  
15 for two years and one member for three years. Thereafter,  
16 such members shall be appointed for regular three year terms.  
17 The terms of the president of the hospital medical staff and  
18 the hospital administrator shall be concurrent with their  
19 appointment. No person shall be ineligible to appointment by  
20 reason of sex, political or religious affiliations. Vacancies in

21 the board shall be reported to the county commission and filled  
22 by appointment in like manner as original appointments for  
23 the unexpired term. The county commission may remove any  
24 director for misconduct or neglect of duty. No compensation  
25 shall be paid or allowed any director.

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## CHAPTER 187

(H. B. 1967—By Delegate Wooton and Delegate Hutchinson)

[Passed March 10, 1984; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal chapter two hundred eleven, acts of the Legislature, regular session, one thousand nine hundred sixty-three, relating to the establishment of the Lake Stephens Tourist Development Authority; and to amend and reenact sections one, two and four, chapter one hundred thirty-six, acts of the Legislature, regular session, one thousand nine hundred eighty-two, relating to combining the Lake Stephens Tourist Development Authority with the Raleigh County Recreation Authority; and increasing the members on the board from five to seven.

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

That chapter two hundred eleven, acts of the Legislature, regular session, one thousand nine hundred sixty-three, is hereby repealed; and that sections one, two and four, chapter one hundred thirty-six, acts of the Legislature, regular session, one thousand nine hundred eighty-two, be amended and reenacted to read as follows:

### **RALEIGH COUNTY RECREATION AUTHORITY.**

#### **§1. Lake Stephens Tourist Development Authority abolished; Raleigh County Recreation Authority created; functions.**

1 The Lake Stephens tourist development authority is here-  
2 by abolished, and its powers and authority are transferred to  
3 the Raleigh County recreation authority heretofore created  
4 by this chapter. The function of the Raleigh County recrea-  
5 tion authority shall be to establish, operate and manage  
6 recreational facilities for the benefit of the citizens of Raleigh  
7 County.

**§2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.**

1 The authority shall consist of five or seven members at  
2 the discretion of the Raleigh County commission to be ap-  
3 pointed by the Raleigh County commission. Such members  
4 shall be appointed and such authority shall commence opera-  
5 tion on or before the first day of July, one thousand nine  
6 hundred eighty-four. If the authority consists of seven mem-  
7 bers, no more than four shall be from the same political party,  
8 and if the authority consists of five members then no more  
9 than three members shall be from the same political party.  
10 One member shall be appointed for a term of five years, one  
11 member for a term of four years, one member for a term  
12 of three years, one member for a term of two years and  
13 one member for a term of one year. The initial terms of  
14 office for new appointees shall commence on the first day  
15 of July, one thousand nine hundred eighty-four. Each suc-  
16 cessor member shall be appointed for a term of five years,  
17 except that any person appointed to fill a vacancy occurring  
18 before the expiration of the term shall serve only for the  
19 unexpired portion thereof. Any member of the authority shall  
20 be eligible for reappointment and the county commission may  
21 remove any member for cause. There shall be an annual  
22 meeting of the authority on the second Monday in July in each  
23 year and a monthly meeting on the day in each month which  
24 the authority may designate in its bylaws. A special meeting  
25 may be called by the president, the secretary or any two  
26 members of the authority and shall be held only after all of  
27 the members are given notice thereof in writing. At all  
28 meetings more than fifty percent of the members shall con-  
29 stitute a quorum and at each annual meeting of the authority  
30 it shall elect a president, a vice president, a secretary and a  
31 treasurer. The authority shall adopt such bylaws, rules and  
32 regulations as are necessary for its own guidance. The authority  
33 shall have all the powers necessary, convenient and advisable  
34 to effectuate the purposes of this act.

35 Each member of the authority shall be compensated month-  
36 ly by the county in an amount to be fixed by the county  
37 commission.

38 Each member presently holding a position on the board of  
39 the Raleigh County recreational authority shall keep the  
40 same until his term shall normally expire.

**§4. Lake Stephens included.**

1 The recreation authority hereby created shall be responsible  
2 for recreational facilities located or situate on or near Lake  
3 Stephens or under the control or jurisdiction of the Lake  
4 Stephens recreation commission.

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# RESOLUTIONS

(Only resolutions of general interest are included herein.)

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## HOUSE CONCURRENT RESOLUTION 30

(By Delegate Davis, et al.)

[Adopted March 10, 1984.]

Requiring the Board of Regents to direct Marshall University to conduct a study of salary inequities among faculty members.

WHEREAS, There presently existing salary inequities among faculty members at Marshall University from college-to-college within the institution, between disciplines and across departments; and

WHEREAS, To effectuate the purpose of this study an ad hoc committee need be formed; and

WHEREAS, These inequities should necessarily be corrected in and among the faculty members of Marshall University for a more consistent salary range schedule; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Board of Regents is hereby requested to direct Marshall University to conduct a study of salary inequities among its faculty members between disciplines, across departments, within each college and from college to college within the institution; and, be it

*Further Resolved,* That the criteria for consideration in studying such inequities should be: (1) Rank in a department and at the institution; (2) years in rank; (3) degree of each faculty member; and (4) the number of years in higher education of each faculty member at Marshall University or any other institution of higher education; and, be it

*Further Resolved,* That such study be completed as soon as possible but in no event later than the first day of January, one thousand nine hundred eighty-five, and that copies of the report including findings and recommendations be forwarded to the Board



of Regents and the Joint Committee on Government and Finance; and, be it

*Further Resolved*, That copies of this resolution be sent to the chancellor of the Board of Regents and to the president of Marshall University.

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COMMITTEE SUBSTITUTE FOR  
HOUSE JOINT RESOLUTION 21  
(By Mr. Speaker, Mr. See, and Delegate Polan)

[Adopted March 10, 1984.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section one-a, article ten thereof, relating to taxation and finance generally; exempting certain property from ad valorem property taxation and when such exemption becomes effective; authorizing the Legislature to provide by general law for the taxation of certain species of property; qualifying or limiting such authority with respect to certain species; providing for the limitation of the rate of taxation upon such property; requiring that increases in the taxation upon certain property be allocated or phased in over a certain period of time; 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-four, which proposed amendment is that section one-a, article ten thereof be amended to read as follows:

**ARTICLE X. TAXATION AND FINANCE.**

**§1a. Exemptions from and additional adjustments to ad valorem property taxation.**

- 1 Notwithstanding the provisions of sections one and one-b of
- 2 this article, household goods and personal effects, if such

3 household goods or personal effects are not held or used for  
4 profit, and all intangible personal property shall be exempt  
5 from ad valorem property taxation: *Provided*, That intangible  
6 personal property may be made subject to such taxation only  
7 to the extent provided by the Legislature by general law not  
8 inconsistent with this section.

9 The Legislature shall not impose ad valorem property tax-  
10 ation upon money, bank deposits and other investments de-  
11 termined by such law to be in the nature of deposits in a  
12 bank or other financial institution, or upon pensions, monies  
13 or investments determined by the Legislature in such law to  
14 be in lieu of or otherwise in the nature of pensions.

15 The Legislature by general law may exempt from such tax-  
16 ation any amount of the value of all or certain intangible per-  
17 sonal property and any type, group or class of such intangibles  
18 but such exemptions shall be uniform throughout the state.  
19 No tax imposed upon such intangibles shall be at a rate or  
20 rates in excess of the maximum rate permitted to be imposed  
21 upon personal property employed exclusively in agriculture as  
22 provided in sections one, one-b or ten of this article, as the  
23 case may be, in the county wherein the intangible personal  
24 property has situs, as such situs is determined by the Legis-  
25 lature in such general law.

26 The valuations with respect to property acquired or created  
27 subsequent to any statewide reappraisal and the valuations  
28 with respect to any intangible personal property subjected to  
29 ad valorem property taxation pursuant to this section shall be  
30 allocated and phased-in over a period of years and be valued  
31 with respect to the same base year as other property subject  
32 to ad valorem property taxation in order to provide for equit-  
33 able and similar treatment of such property subsequently ac-  
34 quired or created or such intangible personal property as com-  
35 pared to similarly situated previously existing property of  
36 similar value whose owner is receiving the benefit of any allo-  
37 cation and phase-in allowed pursuant to section one-b of this  
38 article.

39 Any intangible personal property which would be subject to  
40 ad valorem property taxation under prior provisions of this  
41 Constitution shall continue to be subjected to such taxation as

42 provided by and in accordance with current statutory law  
43 for the assessment of such taxes upon such property, which  
44 laws are hereby validated for such purpose or purposes, until  
45 the first day of July in the year one thousand nine hundred  
46 eighty-five, or until the first statewide reappraisal of property  
47 pursuant to section one-b of this article shall be first imple-  
48 mented and employed to fix values for ad valorem property  
49 taxation, whichever shall last occur, and thereafter no intangi-  
50 ble personal property shall be subject to such taxation save  
51 for and except as provided by the Legislature by general law  
52 enacted after the ratification of the amendment of this section  
53 in the year one thousand nine hundred eighty-four.

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*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. 5" and designated as the "Equitable Taxation of Property and Exemption of Intangible Property Amendment" and the purpose of the proposed amendment is summarized as follows: "To provide for equitable treatment of valuations of property by requiring the phase-in of such valuations through enactment of general law by the Legislature and to provide for the exemption of intangible personal property from ad valorem property tax, while authorizing the Legislature to subject certain of such intangible property or its value to ad valorem taxation, by enactment of general law; providing certain mandatory exemptions from such taxation; and requiring that intangible property be subsequently taxed as class one property."

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## HOUSE JOINT RESOLUTION 32

(By Mr. Speaker, Mr. See)

[Adopted March 9, 1984.]

Proposing an amendment to the Constitution of the State of West Virginia, authorizing the issuance and sale of general obligation bonds of the State, the proceeds of which are to be used and appropriated to provide financing for owner-occupied residences for qualified veterans; providing a limitation on the amount of such bonds and interest thereon; establishing a separate fund of

the State for such purposes and for the levy of taxes sufficient for the payment of such bonds to the extent that amounts available in such fund are insufficient therefor; 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 of West Virginia at the next general election to be held in the year one thousand nine hundred eighty-four, which proposed amendment is as follows:

#### **QUALIFIED VETERANS HOUSING BONDS AMENDMENT**

I. The Legislature shall have the power to authorize the issuing and selling of general obligation bonds of the State which shall be in addition to all other state bonds heretofore authorized. The aggregate annual amount payable on all such bonds, including both principal and interest, shall be limited such that the debt service accruing on such bonds in any fiscal year shall not exceed \$35,000,000, exclusive of any amounts payable on such bonds for which moneys or securities have been irrevocably set aside and dedicated solely for the purpose of such payment. The proceeds of the bonds hereby authorized to be issued and sold shall be used and appropriated to provide financing for owner-occupied residences for persons determined by the Legislature to be qualified veterans, except that (i) part of the proceeds from each separate issuance of bonds may be set aside as a reserve for the purposes of the Veterans' Mortgage Fund herein authorized and (ii) proceeds may be dedicated for the payment of principal, redemption price or interest on any such bonds to be refunded. Such bonds may be issued and sold at such time or times and in such amount or amounts as the Legislature shall authorize. All proceeds of such bonds, and all revenues derived from the use and investment of such proceeds, shall be deposited in a separate fund of the State, designated as the Veterans' Mortgage Fund. Amounts in such fund shall be used solely for the purposes of making loans for qualified veterans, providing for the payment or redemption of such bonds and the interest thereon, and providing for the payment of necessary expenses in connection therewith. When a bond issue as

aforesaid is authorized, the Legislature shall at the same time provide for the collection of an annual state tax sufficient to pay as it may accrue the interest on such bonds and the principal thereof within and not exceeding forty years, and all such taxes so levied shall be irrevocably dedicated for the payment of principal of and interest on such bonds until the obligation of the State with respect to the payment of such principal and interest has been discharged, and any of the covenants, agreements or provisions in the acts of the Legislature levying such taxes shall be enforceable in any court of competent jurisdiction by any of the holders of such bonds. Such tax shall be levied in any year only to the extent that the moneys on deposit in the Veteran's Mortgage Fund are insufficient to pay all amounts accruing on such bonds in such year.

II. The Legislature shall have the power to enact legislation to implement the provisions of this amendment.

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*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. 2" and designated as the "Qualified Veterans Housing Bonds Amendment," and the purpose of the proposed amendment is summarized as follows: "To authorize the Legislature to issue and sell general obligation bonds of the State for the funding of a program to provide financing for owner occupied residences for qualified veterans, which bonds shall not be sold or issued so as to obligate the State for the payments of aggregate annual debt service on such bonds, other than debt service which has been refunded, which exceeds thirty-five million dollars, and to establish a separate fund for such purposes and providing for the levy of taxes sufficient to pay such bonds to the extent that amounts in such fund are insufficient therefor."

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## SENATE CONCURRENT RESOLUTION 1

(By Senator Tonkovich)

[Adopted March 10, 1984.]

Creating a special joint interim commission to conduct a comprehensive study of the financial integrity of the Unemployment

Compensation Trust Fund administered by the West Virginia Department of Employment Security.

WHEREAS, The State has undertaken the obligation of providing unemployment benefits to unemployed West Virginians and their families who, through no fault of their own, are without gainful employment by which to provide the essential means of existence; and

WHEREAS, The recent economic recession has displaced tens of thousands of West Virginians from their jobs and necessitated payment of unemployment benefits in excess of the financial resources of the said Trust Fund and will require the borrowing of nearly \$275,000,000 from the federal government to fund such benefits by the end of fiscal year 1984; and

WHEREAS, Concern has developed for the State's ability to both fund future unemployment benefits and replay the indebtedness to the federal government; therefore, be it

*Resolved by the Legislature of West Virginia:*

That a special interim commission be created to be known as the "Special Interim Commission on the Unemployment Compensation Trust Fund" to consist of the following members:

Three members of the Senate to be appointed by the President, one to be designated by the President as cochairman;

Three members of the House of Delegates appointed by the Speaker, one to be designated by the Speaker as cochairman;

The Director of the Governor's Office of Economic and Community Development or his designee;

A representative from the Department of Employment Security to serve as an ex officio nonvoting advisory member to the commission; and

Six members of the public and residents of the State, three of whom shall represent the interest of industry and three of whom shall represent the interest of labor, to wit: Three members to be appointed by the President of the Senate, and three members to be appointed by the Speaker of the House; and, be it

*Further Resolved,* That the said Special Commission is hereby

directed to review, examine and study the financial integrity of the fund, the indebtedness of the fund to the federal government, the impact on the General Revenue Fund of paying interest therefrom on the indebtedness, the effects of the loss by West Virginia employers of the 0.9% credit against federal unemployment compensation taxes, and the aggregate impact of the preceding upon the Unemployment Compensation Trust Fund, General Revenue Fund and the State's employers and employees; and, be it

*Further Resolved*, That the commission is authorized to meet at such times and in such places as the cochairmen of the commission shall direct and that the committee is authorized to conduct meetings and hearings with such government officials and other parties as the commission shall deem necessary; and, be it

*Further Resolved*, That the commission report its findings and recommendations periodically to the Joint Committee on Government and Finance and that the committee shall complete its work and submit a complete report to the West Virginia Legislature on or before the first day of the 1985 regular session; and, be it

*Further Resolved*, That the expenses necessary to conduct the commission's study and to prepare appropriate reports, recommendations and proposed legislation be paid from the legislative appropriations to the Joint Committee on Government and Finance.

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## SENATE CONCURRENT RESOLUTION 9

(By Senator Lucht, et al.)

[Adopted February 9, 1984.]

Expressing the sentiment of the Legislature relating to the compensation of state employees on the basis of comparability of value of work and creating a Pay Equity Task Force.

WHEREAS, Statistics of the United States Department of Labor of December 1980, show that 60 percent of all women 18-64 are in the workforce; that two thirds of all those women are either the heads of households, or had husbands whose earnings were less than \$10,000.00; that most women are in the workforce because of economic need; that the average working woman has historically earned less than the average working man; and

WHEREAS, This disparity in earnings appears to arise because of the lack in the past of equal educational employment and career opportunities for women and because of the segregation of women into historically undervalued occupations where wages have been depressed; and

WHEREAS, A failure to reassess the basis on which salaries of those employed by the state and its political subdivisions may serve to perpetuate injustices which appear to have had particularly discriminatory impact on minority and older women; and

WHEREAS, The State has heretofore established a policy that persons should not be discriminated against solely on account of sex; and a policy of this State to achieve an equitable relationship between the comparability of the value of work performed by persons employed by the State and by its political subdivisions and the compensation and classification plans adopted by the State and its political subdivisions, is consistent with the antidiscrimination policy of the State; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature should fully ascertain the extent, if any, to which employees of the State and its political subdivisions are paid less than other of its employees performing work of comparable value, particularly because of the apparent lack of equal educational, employment and career opportunities for women and the segregation of women into historically undervalued occupations and the extent to which these undervaluations are expressed and perpetuated by compensation and classification plans within the state government and its political subdivisions; and, be it

*Resolved Further,* That to achieve this purpose, there is hereby created a Task Force on Public Employee Pay Equity, as a subcommittee of the Joint Committee on Government and Finance, which shall develop a single, bias-free, sex-neutral point factor job evaluation system to be applied to all jobs with the State or its political subdivisions, except the position of an elected officer, to rank jobs according to such job evaluation system, to identify the variations in pay for jobs of like rank, to identify variations in access to promotions for jobs of like rank and the extent to which such variations impede career advancement for women to a greater or lesser extent than for men, and to report upon the methods for,



cost of, and other means of removing any discrimination found to exist.

The Task Force on Public Employee Pay Equity shall consist of nine members, three members appointed by the Governor, one of whom shall be the director of personnel of the Civil Service System of the State, one of whom shall be a state employee and one an employee of a political subdivision. The President of the Senate and the Speaker of the House shall each appoint three persons, two of whom shall be members of the House whose presiding officer appoints the member and one of whom shall be a representative of the general public experienced in personnel relations. Persons appointed members of the Task Force shall be citizens of the State of West Virginia.

The members shall not be compensated, except that the political subdivision employing the member designated because employment by a political subdivision may, at the option of the Committee on Government and Finance, be reimbursed at the rate of such member's base salary or pay for each day or part of a day spent by such member on Task Force work and away from his regular place of employment and all members shall be reimbursed for actual and necessary expenses incident to the performance of their duties, subject to such limitations as the Joint Committee on Government and Finance shall establish.

The Task Force on Public Employee Pay Equity shall:

- (a) Be convened no later than April 1, 1984;
- (b) Evaluate the compensation and classification plans for persons in state and political subdivision classified and management services and those in unclassified and exempt but comparable positions (except elected positions), on the basis of objective, job-related criteria in order to determine explicit worth or value of those services and positions, and to identify existing specific career ladders, and impediments thereto. Such evaluation shall include the use of the point factor job evaluation system hereinbefore required;
- (c) Apply the point value evaluation system to determine where

compensation and classification inequities exist in light of the comparability of the value of work;

(d) Report to the Joint Committee on Government and Finance prior to the commencement of the regular session of the Legislature, 1985, all findings of the Task Force, including the methods for cost of, and other means required or recommended for implementation of the principles of equitable compensation and classification based on comparability of value of work as applied to state and political subdivision compensation and classification plans and any applicable provisions of law or regulations. The report shall include, but not be limited to, factor values used in the point factor job evaluation system, comparative job ratings, gender makeup of all job classifications, present salary structures, policy recommendations, cost estimates and proposed legislation for the implementation of equitable compensation principles;

(e) Contract for such experts and technical or professional services as may be required to effectuate the directives of this resolution, under such terms and conditions as the Joint Committee on Government and Finance shall prescribe.

As used in this resolution:

(1) "Comparability of value of work" means the value of the work measured by the needs of the employer and the knowledge, composit skill, effort, responsibility and working conditions required in the performance of the work.

(2) "Compensation and classification plan" means the full range of work-related benefits including, but not limited to, salary, fringe benefits, continuing education and career advancement opportunities for classified and management services and those in unclassified and exempt but comparable positions.

(3) "Skill" means the skill required in the performance of the work, including any type of intellectual or physical skill acquired by the employee through experience, training, education or natural ability.

(4) "Effort" means the effort required in the performance of the work, including any intellectual or physical effort.

COMMITTEE SUBSTITUTE FOR  
SENATE JOINT RESOLUTION 1

(By Senator Stacy and Senator Davis)

[Adopted March 10, 1984.]

Proposing an amendment to the Constitution of the State of West Virginia, amending article three thereof by adding thereto a new section, designated section fifteen-a, relating to the voluntary contemplation, meditation or prayer in schools; 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 all 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-four, which proposed amendment is that article three thereof be amended by adding thereto a new section, designated section fifteen-a, to read as follows:

**ARTICLE III. BILL OF RIGHTS.**

**§15a. Voluntary contemplation, meditation or prayer in schools.**

1 Public schools shall provide a designated brief time at  
2 the beginning of each school day for any student desiring  
3 to exercise their right to personal and private contempla-  
4 tion, meditation or prayer. No student of a public school  
5 may be denied the right to personal and private contem-  
6 plation, meditation or prayer nor shall any student be  
7 required or encouraged to engage in any given contem-  
8 plation, meditation or prayer as a part of the school cur-  
9 riculum.

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10 *Resolved further,* That in accordance with the provi-  
11 sions of article eleven, chapter three of the code of West  
12 Virginia, one thousand nine hundred thirty-one, as  
13 amended, such proposed amendment is hereby numbered  
14 "Amendment Number 3 or as to be determined by the

15 Secretary of State" and designated as the "Voluntary  
16 Contemplation, Meditation or Prayer in School Amend-  
17 ment" and the purpose of the proposed amendment is  
18 summarized as follows: "To require public schools to set  
19 aside a time for students who wish to use their voluntary  
20 contemplation, meditation or prayer rights."

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COMMITTEE SUBSTITUTE FOR  
SENATE JOINT RESOLUTION 4  
(By Mr. McGraw, Mr. President, et al.)

[Adopted March 10, 1984.]

Proposing an amendment to the Constitution of the State of West Virginia, by adding thereto a new article, designated article ten-a, relating to educational, economic and infrastructure development generally, providing for a statewide excess levy of ad valorem taxes, the proceeds of which are to be used in support of the free school system throughout the State; providing for the rate of such excess levy; providing that such excess levy is to replace all local excess levies for schools in the several districts of the State; providing for the manner of distribution of such proceeds; enabling the Legislature to enact legislation for such levy; directing the Legislature to adopt a plan for the improvement of the infrastructure of the state, the imposition of an additional one cent in the general consumers sales and service tax and use tax for such purpose; requiring the proceeds of such tax to be placed in a separate fund; requiring the Legislature to annually appropriate at least forty million dollars for a period of at least fifteen years from such fund for the construction and renovation of schools; directing the Legislature to authorize a total of two hundred million dollars of general obligation bonds for highway and bridge construction and restructuring, no more than fifty million dollars of which may be authorized in any single year; which bonds may be reissued in like amounts to the extent the initial bonds are retired; providing that the debt service attributable to such bonds be paid from such separate fund; providing for the terms and conditions of such bonds; authorizing the Legislature to appropriate sums from said separate fund for the construction and renovation of water

and sewer treatment facilities; establishing priorities for the foregoing appropriations and authorizations; and the allocation of the proceeds of such fund and bond proceeds among the several counties; enabling the Legislature to enact legislation for the implementation of certain of the provisions thereof; numbering and designating such proposed amendment; and providing for the 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-four, which proposed amendment is that said Constitution be amended by adding thereto a new article, designated article ten-a, which proposed amendment is as follows:

**ARTICLE X(A). EDUCATIONAL, ECONOMIC AND INFRASTRUCTURE DEVELOPMENT.**

**§1. Statewide excess levy for quality education.**

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 levies for free schools authorized by sections one-b and ten of article X, of this Constitution, there is hereby imposed a state 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-five, 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 state tax assessed each year upon the classes of property as defined by general law shall equal twenty-two and ninety-five one-hundredths cents on each one hundred dollars of assessed value upon personal property employed exclusively in agriculture, including horticulture and grazing, products of agriculture as defined in section one, article ten of this Constitution, including livestock, while owned by the producer and such intangible

personal property as may be taxable under the provisions of said article ten or by general law, as the case may be, forty-five and ninety one-hundredths cents upon all property owned, used and occupied by the owner thereof exclusively for residential purposes and upon farms occupied and cultivated by their owners or bona fide tenants, and ninety-one and eighty one-hundredths cents upon all other property situated outside or within municipalities: *Provided*, That the Legislature, by general law agreed to by two-thirds of the members elected to each House thereof, may establish a different rate of taxes under this section, not to exceed one hundred per centum thereof, which rate shall be proportionately uniform as to all property as described herein and shall be uniform throughout the state.

Such state levy shall replace any local excess levy for schools in effect on the first day of March, one thousand nine hundred eighty-four, and any local excess levy approved prior to such date by a county 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 state levy shall first be expended by the state 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 until such local levy would have expired; then to provide funds to each local school district for which a levy has been replaced by this amendment, so that each such local school district will continue to receive the same amount in dollars as it received in the final year in which such local levy would have expired, and this amount may be used by such local school district for purposes approved by the West Virginia board of education; and then for such purposes as the Legislature may prescribe in accordance with general law to effectuate a thorough and efficient system of free schools and equality of substantive educational opportunity for all state citizens, including but not limited to implementing standards of quality educational programs and services; providing textbooks and instructional materials; achieving salary equity among employees of the several local school districts; providing regional services to local school districts; and funding any expense associated with the operation of the public schools of the state on the basis of need among the several local school districts.

The Legislature shall have the power to enact legislation to implement the provisions of this section.

**§2. Schools, roads and public works construction.**

a. *Infrastructure improvement plan.* The Legislature shall by general law provide for the improvement of the infrastructure of the state, including use and allocation of resources marshalled pursuant to this amendment for school construction, water and sewer construction and road development.

b. *Dedicated tax imposed.* The Legislature shall by general law impose a general consumers sales and service tax and use 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. Such tax shall first be enacted no later than the regular session of the Legislature, held in the year one thousand nine hundred eighty-five, and shall be made effective not later than the first day of May nor sooner than its date of passage by the Legislature in said year nor may said tax be enacted prior to said regular session. The proceeds of the tax required by this amendment, without deduction for the costs of collection and enforcement thereof, shall be deposited as and when received by the treasurer in a separate fund of the state to be used for the purposes of this amendment as and when appropriated. Such additional tax shall remain in effect for a period of not less than fifteen years and may thereafter be terminated by the Legislature at any time after all bonds issued or reissued pursuant to this section have been retired or redeemed and are no longer outstanding.

c. *School construction.* From the separate fund hereinabove created, the Legislature shall annually appropriate the sum of not less than forty million dollars solely for the construction, renovation or remodeling of elementary or secondary public school buildings or facilities, the equipping of the same in connection with any such construction, renovation or remodeling and the acquisition and preparation of sites for elementary or secondary public school buildings or facilities. The first of such annual appropriations shall be made for the fiscal year commencing the first day of July, one thousand nine hundred eighty-five, and shall continue to appropriate the sum

of not less than forty million dollars each succeeding year until and including the fiscal year commencing the first day of July, one thousand nine hundred ninety-nine. Thereafter, subject to the terms and conditions hereof the Legislature may continue to appropriate sums for like purposes from the separate fund hereinabove created until the expiration of such separate fund as the Legislature may deem proper.

d. *Highway construction bonds.* The Legislature is hereby given authority to authorize the issuing and selling of bonds, upon the full faith and credit of the state, for the purpose or purposes of new highway construction, total replacement of existing highways, the reconstruction of highways utilizing existing road beds, the restructuring of existing bridges or the construction of replacement bridges and for use in matching or maximizing reimbursement for such purposes from the United States or any department, bureau, commission or agency thereof, in an aggregate sum of two hundred million dollars. No more than fifty million dollars shall be authorized in the first fiscal year following the ratification of this amendment nor in any fiscal year thereafter and none shall be authorized for any such year unless the Legislature shall appropriate for the same fiscal year at least forty million dollars as required by this section to be expended for school construction or renovation. All such bonds issued under authority hereof shall provide the authority for the redemption of such bonds prior to their maturity. To the extent that bonds initially authorized under this section for roads or bridges shall have been retired, the Legislature shall have the power to authorize the issuing and selling of bonds solely to replace those bonds initially retired, for the same purposes and uses herein provided, subject nevertheless to the annual and aggregate limitations on amount set forth herein so that the total aggregate amount of such bonds authorized by this section shall not exceed four hundred million dollars.

In any fiscal year that all or any portion of the Legislature's power to authorize bonds is not exercised, such authority, to the extent not so exercised, shall be transferred to the next fiscal year in which no such authority is expressly granted by this section and be exercised only when appropriations for schools under this section in such year shall have been made to the extent required.



The Legislature shall have the power to authorize the issuing and selling of state bonds to refund any bonds issued and sold as aforesaid if the actuarially determined present value of the debt service on the refunding bonds is less than that of the bonds being refunded.

e. *Water and sewer construction.* The Legislature is hereby given power and authority to appropriate from the separate fund created pursuant to this section such sums annually as the Legislature may deem proper and expedient for the purpose of the engineering, construction, renovation and remodeling of water and sewage treatment facilities, the equipping of the same in connection with any such construction, renovation or remodeling and the acquisition and preparation of sites for such facilities, and for use in matching or maximizing grants-in-aid for such purposes from the United States or any department, bureau, commission or agency thereof or other grants-in-aid from this state or any department, bureau, commission or agency thereof or from any other source: *Provided*, That no such appropriation shall be made in any fiscal year until and unless the Legislature shall have appropriated at least forty million dollars for schools as hereinbefore required and shall have provided for that fiscal year's annual debt service upon bonds authorized and issued for roads and bridges pursuant to this section.

The Legislature, either by general law or in the acts by which such sums are annually appropriated, may provide that such sums are to grants-in-aid or may provide the extent to which such sums are to be repaid in whole or in part by the entities for which such sums are so appropriated and to this end may require the imposition of reasonable and sufficient user fees for the purposes of such repayment. To the extent the Legislature does not provide that such sums are to be repaid, such sums so appropriated shall be deemed to be grants-in-aid.

f. *Bond terms and enforcement.* Bonds permitted by this section may be authorized, issued and sold at such time or times after the first day of January, one thousand nine hundred eighty-five, and shall bear such date or dates, shall mature at such time or times, not exceeding twenty-five years, from their respective dates and shall be in such amount or amounts, within the limits hereinbefore provided, as the Legislature shall authorize. When

any bonds permitted by this section are authorized, such bonds shall be issued upon the full faith and credit of the State and the Legislature shall at the time of such authorization provide for the payment thereof from the taxes required to be imposed by this section and for the collection of any other annual states taxes in sums sufficient to pay the principal and interest on such bonds as the same may accrue within and not exceeding twenty-five years. Such sums shall be irrevocably dedicated for the payment of principal of and interest on such bonds until such principal of and interest on such bonds are finally paid and discharged, and any of the covenants, agreements or provisions in the acts of the Legislature levying such taxes shall be enforceable in any court of competent jurisdiction by any of the holders of the bonds.

*g. Allocation.* (1) Except as otherwise provided in subdivision (2) of this subsection, the Legislature shall provide by general law for the allocation of funds appropriated pursuant to this section and the proceeds of bonds authorized thereby for construction in the several counties of the state upon bases determined by the Legislature to be fair and reasonable, including factors such as education needs, population to be served, areas of high unemployment and economic development needs.

(2) With respect to the funds annually appropriated for the construction, renovation or remodeling of public school buildings, pursuant to subsection (c) of this section, distribution of the forty million dollars required to be annually appropriated shall be made by the Legislature to all counties first on a per pupil basis so that each district board of education shall receive annually in each year at least twenty dollars per pupil calculated on the basis of net enrollment. The sums so allocated to each such district shall be expended only for projects approved by the state board of education. Any sums remaining after such annual per pupil distribution shall be distributed in the manner provided by the Legislature, in accordance with subdivision (1) of this subsection.

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*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 number "Amendment No. 4" and designated as the "Better Schools, Roads and Public Works

Construction Amendment" and the purpose of the proposed amendment is summarized as follows: "To impose a statewide levy for schools beginning on the first day of July, one thousand nine hundred eighty-five, first to provide funds equal to local excess levies for schools replaced, and then to effectuate a thorough and efficient system of free schools and equality of substantive educational opportunity for all state citizens and to direct the legislature to implement a plan of infrastructure improvements through the imposition of an additional one cent in the general consumers sales and service tax and use tax for at least fifteen years which is to be kept in a separate fund; that forty million dollars be first appropriated annually for school construction and/or renovation; that two hundred million dollars in general obligation bonds to be authorized, no more than fifty million dollars of which may be issued in any given year, for highway and bridge construction or replacement, which bonds may be reissued in like amounts to the extent the initial bonds are retired, the debt service of which shall be paid from said separate fund; and that appropriations may be made from said fund for the construction and renovation of water and sewer treatment facilities.



# LEGISLATURE OF WEST VIRGINIA

## ACTS

### FIRST EXTRAORDINARY SESSION, 1984

#### CHAPTER 1

(S. B. 1—By Mr. McGraw, Mr. President, Senator Wright and Senator Tomblin)

[Passed May 19, 1984; 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-four, to the Governor's Office—Civil Contingent Fund, Account No. 1240, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill.

WHEREAS. The Governor submitted to the Legislature an executive message dated May 19, 1984, which contained revisions of the revenue estimates and financial statements for the general revenue fund; and

WHEREAS. It appears from such executive message, that there now remains unappropriated a balance in the state fund, general revenue, available for further appropriation during the fiscal year 1983-84, a part of which balance is hereby appropriated by the terms of this supplemental appropriation; therefore

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

That Account No. 1240, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, be supplemented by adding the following item and language of appropriation:

## 1 TITLE 2. APPROPRIATIONS.

## 2 Section 1. Appropriations from General Revenue.

## 3 EXECUTIVE

4 8—*Governor's Office—Civil Contingent Fund*  
5 Acct. No. 1240

State  
General  
Revenue  
Fiscal Year  
1983-84

6 1a Southern West Virginia Flood Relief . . . \$ \$3,500,000

7 The purpose of this supplementary appropriation is to  
8 provide funds for relief from the May, 1984 flood disaster in  
9 southern West Virginia for areas of the state specified as  
10 disaster areas in the declaration of the President of the  
11 United States and the proclamations of the Governor, by  
12 providing appropriations to match or maximize grants-in-  
13 aid from the federal government and to provide for state  
14 funding to repair state roads and public facilities, which  
15 roads and facilities are not eligible for federal disaster  
16 assistance.

17 Any part of this appropriation may be transferred to any  
18 account in the governor's office or to any other department  
19 of state government for such purposes and for disbursement  
20 therefrom.

21 This appropriation shall be available for expenditure  
22 immediately upon the effective date of this bill, with any  
23 unexpended balance remaining in the appropriation at the  
24 close of fiscal year 1983-84 being hereby reappropriated for  
25 expenditure during the subsequent fiscal year 1984-85.

26 Following the effective date of this bill, a monthly report  
27 shall be submitted by the Governor to the Legislative  
28 Auditor, detailed and itemized, in nature, of all transfers  
29 and expenditures made hereunder and for such purposes  
30 during the preceding month, and further, on or before  
31 January one, one thousand nine hundred eighty-five, a  
32 special report shall be submitted by the Governor to the  
33 Legislature and to the Congress setting forth

34 recommendations and proposals to prevent future flooding  
35 in the areas specified as disaster areas, and other affected  
36 areas, including a review of the recommendations and  
37 initiatives of the Flood Cause and Prevention Commission  
38 following the 1977 flood.

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## CHAPTER 2

(S. B. 3—By Mr. McGraw, Mr. President)

[Passed May 19, 1984; in effect from passage. Approved by the Governor.]

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-four, to the Geological and Economic Survey, Account No. 5200, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, and as supplemented and amended by acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three.

WHEREAS, The chief executive has informed the Legislature that federal funds have been received for new programs and are available for the Geological and Economic Survey, for expenditure in fiscal year 1983-84; the same are hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

That Account No. 5200, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, as supplemented and amended by acts of the Legislature, First Extraordinary Session, one thousand nine hundred eighty-three, be supplemented by adding the following amounts to the designated line items:

- 1 TITLE 2. APPROPRIATIONS.
- 2 Section 2. Appropriations of federal funds.
- 3 68—*Geological and Economic Survey*

4

Acct. No. 5200

		Federal Funds Fiscal Year 1983-84
5	1 Personal Services.....	\$ 18,550
6	2 Current Expenses .....	18,516
7	3 Repairs and Alterations.....	4,800
8	4 Equipment.....	11,750

9 The purpose of this supplementary appropriation bill is  
 10 to supplement the aforesaid account by adding the newly  
 11 received above amounts of federal funds to the specified  
 12 items for expenditure in the current fiscal year of 1983-84.  
 13 Such amounts shall be available for expenditure  
 14 immediately upon the effective date of this bill.

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### CHAPTER 3

(S. B. 4—By Mr. McGraw, Mr. President)

[Passed May 19, 1984; in effect from passage. Approved by the Governor.]

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-four, to the Public Service Commission, Motor Carrier Division, Account No. 8290, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill and as supplemented and amended by acts of the Legislature, First Extraordinary Session, one thousand nine hundred eighty-three.

WHEREAS, The chief executive has informed the Legislature that federal funds have been received for new programs and are available for the Public Service Commission, Motor Carrier Division, for expenditure in fiscal year 1983-84; the same are hereby appropriated by the terms of this supplementary appropriation bill; therefore

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



That Account No. 8290, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, as supplemented and amended by acts of the Legislature, First Extraordinary Session, one thousand nine hundred eighty-three, be supplemented by adding the following amounts to the designated line items:

- 1 TITLE 2. APPROPRIATIONS.  
 2 Section 4. Appropriations of federal funds.  
 3 98—Public Service Commission — Motor Carrier Division  
 4 Acct. No. 8290  
 5 TO BE PAID FROM SPECIAL REVENUE FUND

	Federal Funds Fiscal Year 1983-84
6 1 Personal Services.....	\$ 31,000
7 2 Current Expenses .....	44,700
8 3 Equipment.....	4,300

- 9 The purpose of this supplementary appropriation bill is  
 10 to supplement the aforesaid account by adding the newly  
 11 received above amounts of federal funds to the specified  
 12 items for expenditure in the current fiscal year of 1983-84.  
 13 Such amounts shall be available for expenditure  
 14 immediately upon the effective date of this bill.

## CHAPTER 4

(S. B. 2—By Mr. McGraw, Mr. President)

[Passed May 19, 1984; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the State Commission on Aging, Account No. 4060, State Board of Education—Rehabilitation Division, Account No. 4400, and the State Health Department—Maternal and Child Health, Account No. 8502, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-four, as appropriated by

chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, and as supplemented by chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three.

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

That the items of the total appropriations of Account No. 4060, Account No. 4400 and Account No. 8502, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-three, known as the budget bill, and as supplemented by chapter two, acts of the Legislature, First Extraordinary Session, one thousand nine hundred eighty-three, and being prior appropriated federal funds, be supplemented, amended and transferred and with such effected items to thereafter read as follows:

1	TITLE 2. APPROPRIATIONS.		
2	<b>Section 2. Appropriations of federal funds.</b>		
3	47— <i>State Commission on Aging</i>		
4	Acct. No. 4060		
			Federal Funds
			Fiscal Year 1983-84
5	2	Current Expenses .....	\$ 165,622
6	7	To Local Entities.....	6,853,208
7	51— <i>State Board of Education—Rehabilitation Division</i>		
8	Acct. No. 4400		
9	1	Personal Services.....	\$9,585,896
10	2	Current Expenses .....	4,270,322
11	4	Equipment.....	269,077
12	<b>Section 8. Appropriations from federal block grants.</b>		
13	139— <i>State Health Department—</i>		
14	<i>Maternal and Child Health</i>		
15	Acct. No. 8502		
16	TO BE PAID FROM FEDERAL FUNDS		

17	3	Repairs and Alterations.....	\$	—0—
18	3a	Equipment.....		25,000

19 The purpose of this supplementary appropriation bill is  
20 to supplement, amend and transfer certain moneys from  
21 one item of the existing appropriation of federal funds for  
22 current fiscal year, one thousand nine hundred eighty-four,  
23 to another newly created item or items of such  
24 appropriation for the designated spending unit, with no  
25 new moneys being appropriated hereby. The amounts as  
26 newly itemized for expenditure during such fiscal year shall  
27 be available for expenditure upon the effective date of this  
28 bill.

## DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

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