

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1987
Second Extraordinary Session, 1986

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FOREWORD

This volume contains the Acts of the First Regular Session of the 68th Legislature, 1987, and Second Extraordinary Session of the 67th Legislature, 1986.

First Regular Session, 1987

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

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

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

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

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

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

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

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

Uniform School Funding Amendment. The House had 37 House Resolutions and the Senate had 46 Senate Resolutions, of which 21 House and 42 Senate were adopted.

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

Second Extraordinary Session, 1986

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

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

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

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

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

DONALD L. KOPP

*Clerk of the House of Delegates
and Keeper of the Rolls.*

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1987

OFFICERS

Speaker—Robert C. Chambers, Huntington*Speaker Pro Tem*—W. Marion Shiflet, Union*Clerk*—Donald L. Kopp, Clarksburg*Sergeant at Arms*—Oce W. Smith, Jr., Fairmont*Doorkeeper*—Dannie Wingo, Yukon

District	Name	Address
First	Patricia Bradley (D)	Weirton
	Sam E. Love, Jr., (D)	Weirton
Second	Roy E. Givens (D)	Wellsburg
	Bernard V. Kelly (D)	Weirton
Third	David B. McKinley (R)	Wheeling
	Paul J. Otte (R)	Wheeling
	Bill Reger (D)	Wheeling
Fourth	Rodney T. Berry (D)	Moundsville
	Albert D. Yanni (D)	Glen Dale
Fifth	Robert L. Jones (R)	New Martinsville
Sixth	Larry D. Swann (R)	Salem
Seventh	Otis A. Leggett (R)	St. Marys
Eighth	Stephen C. Bird (D)	Parkersburg
	Robert W. Burk, Jr. (R)	Parkersburg
	George E. Farley (D)	Parkersburg
	Ken Nowell (R)	Parkersburg
	Sandy Rogers (R)	Vienna
Ninth	Marjorie H. Burke (D)	Sand Fork
	Robert H. Kidd (D)	Sutton
Tenth	Bob Ashley (R)	Spencer
Eleventh	Virginia J. Starcher (D)	Ripley
Twelfth	William J. Artrip (D)	Southside
	Deborah F. Phillips (D)	Hurricane
	John H. Reed, III (R)	Hurricane
	Patricia Holmes White (D)	Poca
Thirteenth	Robert C. Chambers (D)	Huntington
	Robert L. Childers (D)	Huntington
	Phyllis E. Given (D)	Huntington
	Patricia O. Hartman (D)	Huntington
	Richard Houvouras (D)	Huntington
	Stephen T. Williams (D)	Huntington
Fourteenth	Kenneth Adkins (D)	Huntington
	Walter Rollins (D)	Kenova
Fifteenth	Jim Reid (D)	Williamson
	Mike Whitt (D)	Meador
Sixteenth	W. E. Anderson (D)	Logan
	Joe C. Ferrell (D)	Logan
	R. L. McCormick (D)	Logan
	Ancil Miller (D)	Chapmanville
Seventeenth	Robert L. Mullett (D)	Peytona
Eighteenth	Ernest C. Moore (D)	Thorpe
	Rick Murensky (D)	Welch
Nineteenth	Clayton W. Hale (D)	Pineville
	Harold Hayden (D)	Mullens
Twentieth	Gilbert E. Bailey (D)	Princeton
	Richard D. Flanigan (D)	Princeton
	James W. McNeely (D)	Athens
	Howard L. Wellman (D)	Bluefield

HOUSE OF DELEGATES

Twenty-first.....	W. Marion Shiflet (D).....	Union
Twenty-second.....	Paul R. Hutchinson, Jr., (D).....	Beckley
	Sterling Lewis, Jr. (D).....	Daniels
	Jack J. Roop (D).....	Beckley
	Arnold W. Ryan (D).....	Hinton
	Tom Susman (D).....	Beckley
Twenty-third.....	Bonnie Brown (D).....	South Charleston
	Dee Capterton (D).....	Charleston
	Barbara Hatfield (D).....	South Charleston
	John R. Hoblitzell (R).....	Charleston
	James F. Humphreys (D).....	Charleston
	Thomas A. Knight (D).....	South Charleston
	Charlotte J. Pritt (D).....	Charleston
	Lyle Sattes (D).....	Charleston
	Rudy Seacrist (D).....	Charleston
	Henry C. Shores (R).....	Charleston
	Sharon Spencer (D).....	Charleston
John M. Wells (R).....	Charleston	
Twenty-fourth.....	John W. Hatcher, Jr. (D).....	Fayetteville
	William Tom Louisos (D).....	Oak Hill
	John Pino (D).....	Oak Hill
Twenty-fifth.....	Betty D. Crookshanks (D).....	Rupert
	Sarah Lee Neal (D).....	Rainelle
Twenty-sixth.....	Linda Nelson Garrett (D).....	Webster Springs
	C. Farrell Johnson (D).....	Summersville
Twenty-seventh.....	Charles F. Jordan, Jr., (D).....	Elkins
	Joe Martin (D).....	Elkins
Twenty-eighth.....	Donald L. Stemple (R).....	Philippi
	Clifford L. Summers (D).....	Buckhannon
Twenty-ninth.....	Robert J. Conley (R).....	Weston
Thirtieth.....	Percy C. Ashcraft, II (D).....	Clarksburg
	Floyd Fullen (D).....	Bridgeport
	Joseph M. Minard (D).....	Clarksburg
	Kenneth H. Riffle (D).....	Clarksburg
Thirty-first.....	James L. Pitrolo, Jr. (D).....	Fairmont
	Paul E. Prunty (R).....	Fairmont
	Duane Southern (D).....	Fairmont
	William E. Stewart (D).....	Fairmont
Thirty-second.....	Michael A. Buchanan (D).....	Morgantown
	Shelby (Bosley) Leary (D).....	Blacksville
	Twila S. Metheney (D).....	Morgantown
	Larry E. Schifano (D).....	Morgantown
Thirty-third.....	Fred Peddicord, III (R).....	Kingwood
	Floyd R. Stiles (R).....	Kingwood
Thirty-fourth.....	Marc L. Harman (R).....	Petersburg
	Robert D. Harman (R).....	Keyser
Thirty-fifth.....	Thomas J. Hawse, III, (D).....	Moorefield
Thirty-sixth.....	Jerry L. Mezzatesta (D).....	Romney
Thirty-seventh.....	Patrick H. Murphy (D).....	Martinsburg
Thirty-eighth.....	Larry V. Faircloth (R).....	Inwood
Thirty-ninth.....	John Overington (R).....	Martinsburg
Fortieth.....	William H. Martin (D).....	Charles Town

(D) Democrats.....	78
(R) Republicans.....	22
Total.....	100

MEMBERS OF THE SENATE

REGULAR SESSION, 1987

OFFICERS

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

District	Name	Address
First.....	John G. Chernenko (D).....	Wellsburg
	*John M. Karras (R).....	Wheeling
Second.....	Thomas E. Loehr (D).....	New Martinsville
	*Dan R. Tonkovich (D).....	Benwood
Third.....	Donna J. Boley (R).....	St. Marys
	Keith Burdette (D).....	Parkersburg
Fourth.....	Oshel B. Craig (D).....	Hurricane
	*Mike Shaw (R).....	Pt. Pleasant
Fifth.....	*Mack C. Jarrell (D).....	Ceredo
	B. Ned Jones (D).....	Huntington
Sixth.....	H. Truman Chafin (D).....	Williamson
	*John Pat Fanning (D).....	Iaeger
Seventh.....	Lloyd G. Jackson, II (D).....	Hamlin
	*Earl Ray Tomblin (D).....	Chapmanville
Eighth.....	John Si Boettner (D).....	Charleston
	*Mario J. Palumbo (D).....	Charleston
Ninth.....	Tracy W. Hylton (R).....	Beckley
	Bruce O. Williams (D).....	Rock View
Tenth.....	Frederick L. Parker (D).....	Greenville
	*Tony E. Whitlow (D).....	Kellysville
Eleventh.....	J. D. Brackenrich (D).....	Lewisburg
	*Robert K. Holliday (D).....	Fayetteville
Twelfth.....	*Jae Spears (D).....	Elkins
	Larry A. Tucker (D).....	Summersville
Thirteenth.....	*William R. Sharpe, Jr. (D).....	Weston
	M. Jay Wolfe (R).....	Bridgeport
Fourteenth.....	Joe Manchin, III (D).....	Fairmont
	George Warner, Jr. (R).....	Morgantown
Fifteenth.....	*Gerald W. Ash (D).....	Morgantown
	C. N. Harman (R).....	Grafton
Sixteenth.....	Sondra Moore Lucht (D).....	Martinsburg
	*Vernon C. Whitacre (D).....	High View
Seventeenth.....	Darrell E. Holmes (D).....	Charleston
	*Tod J. Kaufman (D).....	Charleston

* Elected in 1984. All others elected in 1986.

(D) Democrats.....	27
(R) Republicans.....	7
Total.....	34

COMMITTEES OF THE SENATE

Regular Session, 1987

STANDING

Agriculture

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

Banking and Insurance

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

Confirmations

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

Education

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

Energy, Industry and Mining

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

Finance

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

Government Organization

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

Health and Human Resources

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

Interstate Cooperation

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

Judiciary

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

Labor

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

Military

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

Natural Resources

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

Transportation

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

Rules

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

SELECT COMMITTEES

Economic Development

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

Quality Education

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

JOINT COMMITTEES

Enrolled Bills

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

Government and Finance

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

Joint Rules

Tonkovich (CoChairman), Boettner and Harman.

Legislative Rule-Making Review

Tucker (Chairman), Boettner, Holmes, Tomblin, Harman and Hylton.

**COMMITTEES OF THE
HOUSE OF DELEGATES**

Regular Session, 1987

STANDING

Agriculture and Natural Resources

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

Banking and Insurance

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

Constitutional Revision

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

Education

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

Finance

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

Government Organization

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

Health and Human Resources

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

Industry and Labor

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

Judiciary

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

Political Subdivisions

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

Roads and Transportation

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

Rules

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

SELECT COMMITTEES**Economic Policy**

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

Governmental Ethics

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

JOINT COMMITTEES

Enrolled Bills

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

Government and Finance

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

Joint Rules

Chambers (CoChairman), Murensky and Swann.

Legislative Rule-Making Review

Knight (Chairman), Givens, Pritt, Burk and Stiles.



LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST REGULAR SESSION, 1987

CHAPTER 1

(H. B. 3195—By Delegate Farley)

[Passed March 16, 1987; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, to the Auditor's Office-General Administration, Account No. 1500, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an executive budget document, dated January 14, 1987, wherein is set forth the revenue estimates and financial statement for the general revenue fund, including the fiscal year 1986-87; and

WHEREAS, It appears from such executive budget document and page V thereof that there now remains unappropriated, a balance in the state fund, general revenue, of \$19,616,564 available for further appropriation in respect of fiscal year 1986-87, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 1500, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented by adding to such account the following new and additional line item:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 FISCAL

4 12—*Auditor’s Office—General Administration*

5 Acct. No. 1500

6 6a Unclassified \$ — \$ 8,000,000

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

17 The purpose of this supplementary appropriation bill
18 is to supplement this account in the budget bill for
19 current fiscal year 1986-87 by adding thereto a new line
20 item and with such funds being available for expendi-
21 ture, immediately upon passage of the bill and in such
22 current fiscal year, to respond to the nonpayment of
23 debts resulting from short-fall of receipts under the
24 state’s revenue laws and the associated cash-flow
25 problems in respect thereof; the state auditor being

- 26 authorized to prioritize and determine debts to be paid
27 through expenditure of these funds.

CHAPTER 2

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

[Passed February 23, 1987; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, to the State Department of Education, Account No. 2860, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an executive budget document, dated January 14, 1987, wherein is set forth the revenue estimates and financial statement for the general revenue fund, including the fiscal year 1986-87; and

WHEREAS, It appears from such executive budget document and page V thereof that there now remains unappropriated, a balance in the state fund, general revenue, of \$19,616,564 available for further appropriation in respect of fiscal year 1986-87, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 2860, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented by adding to such account and existing line item therein, the following additional sum:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EDUCATIONAL

4 29—*State Department of Education*

5 Acct. No. 2860

6	9	Tuition Waiver.....	\$ 64,285
7	12	Total	\$ 64,285

8 The purpose of this supplementary appropriation bill
 9 is to supplement this account and existing line item
 10 therein for expenditure in the current fiscal year 1986-
 11 87 in order to achieve reimbursement of tuition to any
 12 professional teacher renewing his or her professional
 13 certificate, or other certificates or permits toward
 14 maintaining full teaching status and completion of
 15 requirements and courses for such purpose. The funds
 16 in the above line item shall be used to pay and
 17 reimburse those persons on record with the department
 18 as being entitled to payment in connection with this
 19 departmental request, notwithstanding that such
 20 entitlement to reimbursement accrued in a prior fiscal
 21 year nor that the award of such tuition waiver by the
 22 department may have constituted expenditures in excess
 23 of appropriated amounts. These funds shall be promptly
 24 available for expenditure upon the effective date of this
 25 bill.



CHAPTER 3

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

[Passed February 24, 1987; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, to the Department of Corrections—Central

Office, Account No. 3680, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an executive budget document, dated January 14, 1987, wherein is set forth the revenue estimates and financial statement for the general revenue fund, including the fiscal year 1986-87; and

WHEREAS, It appears from such executive budget document and page V thereof that there now remains unappropriated, a balance in the state fund, general revenue, of \$19,616,564 available for further appropriation in respect of fiscal year 1986-87, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 3680, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented by adding to such account the following sum to the designated line item:

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	CORRECTIONS	
4	43—Department of Corrections—	
5	Central Office	
6	Acct. No. 3680	
7	6 Adult Female Offenders Contract	
8	Current Expenses	\$140,000

9 The purpose of this supplementary appropriation bill
10 is to supplement this account in the budget bill for fiscal
11 year 1986-87 by adding to this existing item an amount
12 therefor to be available for expenditure in such fiscal
13 year.

CHAPTER 4

(H. B. 2701—By Delegates Southern and Pritt)

[Passed February 23, 1987; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, to the Department of Corrections—Correctional Units, Account No. 3770, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an executive budget document, dated January 14, 1987, wherein is set forth the revenue estimates and financial statement for the general revenue fund, including the fiscal year 1986-87; and

WHEREAS, It appears from such executive budget document and page V thereof that there now remains unappropriated, a balance in the state fund, general revenue, of \$19,616,564 available for further appropriation in respect of fiscal year 1986-87, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 3770, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented by adding to the existing item in such account the following sum:

1	TITLE 2. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	CORRECTIONS	
4	45—Department of Corrections—	
5	Correctional Units	
6	Acct. No. 3770	
7	3 Current Expenses	
8	Inmate Medical Expenses	\$218,000

9 The purpose of this supplementary appropriation bill
10 is to supplement this account in the budget bill for
11 current fiscal year 1986-87 by adding to the existing
12 item an amount therefor to be available for expenditure
13 in such fiscal year and upon passage of the bill.

CHAPTER 5

(H. B. 3194—By Delegate Farley)

[Passed March 16, 1987; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, to the West Virginia Public Employees Insurance Board, Account No. 6150, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an executive budget document, dated January 14, 1987, wherein is set forth the revenue estimates and financial statement for the general revenue fund, including the fiscal year 1986-87; and

WHEREAS, It appears from such executive budget document and page V thereof that there now remains unappropriated, a balance in the state fund, general revenue, of \$19,616,564 available for further appropriation in respect of fiscal year 1986-87, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 6150, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented by adding to such account the following sum to the designated line item:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 BOARDS AND COMMISSIONS

4 85—*West Virginia Public Employees*
5 *Insurance Board*

6 Acct. No. 6150

7 3 Public Employees

8 Health Insurance

9 State Contributions \$ 11,000,000

10 Any unexpended balance remaining in the appropri-
11 ation Public Employees Health Insurance State Contri-
12 butions at the close of the fiscal year 1986-87 is hereby
13 reappropriated for expenditure during the fiscal year
14 1987-88.

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

CHAPTER 6

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

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

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

WHEREAS, The governor submitted to the Legislature the executive budget document dated January 14, 1987, wherein on page XII thereof is set forth the revenues and expenditures of the state road fund, including fiscal year 1986-87; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the state road fund available for further appropriation during the fiscal year 1986-87, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriations from the state road fund to the state Department of Highways, Account No. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented as follows:

1	TITLE 2. APPROPRIATIONS.	
2	Section 3. Appropriations from other funds.	
3	88—Department of Highways	
4	(WV Code Chapters 17 and 17C)	
5	Acct. No. 6700	
6		Other
7		Funds
8		Fiscal Year
9		1986-1987
10	1	Maintenance, Expressway,
11	2	Trunkline and Feeder\$ 56,000,000
12	3	Maintenance, State
13	4	Local Services 77,390,000
14	5	Maintenance, Contract
15	6	Paving and Secondary
16	7	Road Maintenance 34,000,000
17	8	Inventory Revolving 1,599,000
18	9	Toll Road Examination..... 500,000
19	10	Equipment Revolving 12,329,000
20	11	General Operations..... 22,821,000*
21	12	Annual Increment 208,000

22	13	Debt Service.....	83,650,000
23	14	Interstate Construction	158,000,000
24	15	Other Federal Aid Program	180,500,000
25	16	Appalachian Program.....	32,000,000
26	17	Nonfederal Aid Construction	5,794,000
27	18	TOTAL.....	\$664,791,000

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

28 The purpose of this supplementary appropriation bill
 29 is to supplement existing items in the aforesaid account
 30 for expenditure in the fiscal year of 1986-1987 and to
 31 reflect the new total spending authority of the spending
 32 unit for such fiscal year. Such increased amounts shall
 33 be available for expenditure upon the effective date of
 34 this bill.

CHAPTER 7

(S. B. 744—Originating in the Senate Committee on Finance)

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

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

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

Be it enacted by the Legislature of West Virginia:

That the budget bill, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred

eighty-six, be supplemented by adding to section nine thereof the account and line item thereof, as follows:

1	TITLE 2. APPROPRIATIONS.	
2	Section 9. Appropriation from federal block	
3	grants.	
4	<i>143-A—State Health Department — Alcohol and</i>	
5	<i>Drug Abuse Treatment and Rehabilitation</i>	
6	Acct. No. 8503-A	
7	TO BE PAID FROM FEDERAL FUNDS	
8	1	Unclassified—Total \$584,000

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

15 Such amount shall be available for expenditure
16 immediately upon the effective date of the bill. Any
17 unexpended balance remaining at the close of fiscal year
18 1986-87 is hereby reappropriated for expenditure in
19 fiscal year 1987-88.

CHAPTER 8

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

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

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain specified amounts and in the accounts, as specified, of the existing appropriations as of the first day of March, one thousand nine hundred eighty-seven, for the Department of Agriculture, Account No. 5100-14; for the Department of Agriculture-Soil Conservation Committee, Account No. 5120-10; and for the Depart-

ment of Human Services, Account No. 4050-77, as appropriated by budgetary act for, or as brought forward to, the current fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-seven.

Be it enacted by the Legislature of West Virginia:

1 That the specified balance amounts and in the
2 accounts, as specified, unexpended and unencumbered
3 as of the first day of March, one thousand nine hundred
4 eighty-seven, appropriated for, or brought forward to,
5 current fiscal year 1986-87, be supplemented, amended,
6 reduced and caused to expire into the state fund, general
7 revenue of this state, as follows: Account No. 5100-14,
8 expire the total amount of balances; Account No. 5120-
9 10, expire the amount of \$222,189.20 or such amount so
10 as to leave \$120,000 unexpired; and Account No. 4050-
11 77, expire the total amount of balances; and with such
12 expired amounts to be immediately available for other
13 and further appropriation upon the effective date of this
14 bill and in the current fiscal year 1986-87.

15 The purpose of this supplementary appropriation bill
16 is to supplement, amend, reduce and cause to expire into
17 the state fund, general revenue of the state, the amounts
18 as specified from existing budgetary appropriations for
19 fiscal year 1986-87 from the Department of Agriculture,
20 Account No. 5100-14 (which had an account balance of
21 \$150,000 as of December 31, 1986) and with the total
22 balance, as unexpended or unencumbered, being ex-
23 pired; from the Department of Agriculture-Soil Conser-
24 vation Committee, Account No. 5120-10 (which had an
25 account balance of \$342,189.20, as of December 31, 1986)
26 and with the amount of \$222,189.20 being expired or
27 such amount as will leave \$120,000 unexpired; and from
28 the Department of Human Services, Account No. 4050-
29 77 (which had an account balance of \$869,594.86, as of
30 December 31, 1986) and with the total balance, as
31 unexpended or unencumbered, being expired; with all
32 of such expired amounts becoming immediately avail-
33 able for other and further appropriation upon the
34 effective date of the bill and in current fiscal year 1986-
35 87.

CHAPTER 9

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

[Passed March 6, 1987; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, specified amounts of the balances in the Management Service Fee account of the Treasurer's Office, Account No. 8004-08, as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

1 That the sum of eight hundred thousand dollars of the
2 balances in Account No. 8004-08, the Management
3 Service Fee account of the Treasurer's Office, including
4 balances carried forward on July 1, 1986, available for
5 expenditure in the current fiscal year 1986-87, as
6 appropriated by chapter twenty-nine, acts of the
7 Legislature, regular session, one thousand nine hundred
8 eighty-six, known as the budget bill, be supplemented,
9 amended, reduced and caused to expire into the state
10 fund, general revenue of the state, and with such
11 amount to be thereafter available for other and further
12 appropriation upon the effective date of this bill.

13 The purpose of this supplementary appropriation bill
14 is to supplement, amend, reduce and cause to expire out
15 of the Management Service Fee account of the Treas-
16 urer's Office, and into the state fund, general revenue
17 of the state, the sum of eight hundred thousand dollars
18 of the money balances in such account in order to make
19 such sum available for other and further appropriation
20 and expenditure in the current fiscal year 1986-87 and
21 upon the effective date of the bill.

CHAPTER 10

(H. B. 3191—By Delegates Jordan and Hawse)

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

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, specified remaining balance amounts, unexpended and unencumbered as of the first day of March, one thousand nine hundred eighty-seven, from the Treasurer's Office-Disaster Recovery Fund, Account No. 8007-18, as appropriated by budgetary act for or as brought forward to the current fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-seven.

Be it enacted by the Legislature of West Virginia:

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

11 The purpose of this supplementary appropriation bill
12 is to supplement, amend, reduce and cause to expire into
13 the state fund, general revenue of the state, the total
14 unexpended, unencumbered and lawfully available total
15 balances in the Treasurer's Office-Disaster Recovery
16 Fund, account No. 8007-18, with such moneys becoming
17 immediately available for other and further appropri-
18 ation upon the effective date of the bill and in current
19 fiscal year 1986-87.

CHAPTER 11

(S. B. 594—By Senators Tonkovich, Mr. President, by request, and Harman)

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

AN ACT to supplement, amend and transfer between items of appropriation of the West Virginia Alcohol Beverage Control Commissioner, Account No. 9270, as appropriated in chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the West Virginia Alcohol Beverage Control Commissioner, Account No. 9270, be amended to read as follows:

1 TITLE 2. APPROPRIATIONS.

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

3 *122—West Virginia Alcohol*
4 *Beverage Control Commissioner*

5 (WV Code Chapter 60)

6 Acct. No. 9270

7 TO BE PAID FROM SPECIAL REVENUE FUND

8	1	Personal Services	\$9,604,230
9	3	Current Expenses	5,333,672
10	4	Repairs and Alterations	225,000
11	5	Equipment	245,000
12	6	Social Security Matching	708,225
13	7	Public Employees	
14	8	Retirement Matching.....	940,999
15	9	Public Employees	
16	10	Health Insurance.....	1,173,245

17 The purpose of this bill is to amend and transfer funds
18 between items of appropriation with no increase in the
19 total appropriation.

CHAPTER 12

(S. B. 587—By Senators Tonkovich, Mr. President, by request, and Harman)

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

AN ACT to supplement, reduce and amend Account No. 4405 (7873), chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the following lines in Account No. 4405 (7873) be amended to read as follows:

1	TITLE 2. APPROPRIATIONS.	
2	Section 4. Appropriations of federal funds.	
3	53—State Board of Education	
4	Rehabilitation Division	
5	(WV Code Chapter 18)	
6	Acct. No. 4405	
7	3 Current Expenses	\$6,412,230
8	5 Equipment	322,537
9	13 Disability Determination	
10	14 Medical Payments.....	6,310,902

11 The purpose of this bill is to transfer federal funds
12 between items of appropriation for better utilization of
13 funds by the Rehabilitation Division.

14 This action does not alter the total federal spending
15 authority appropriated to this division.

CHAPTER 13

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

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

AN ACT to amend and reenact section two, article three, chapter five of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to the attorney general prosecuting crimes committed by persons incarcerated in state institutions of corrections when requested by a prosecuting attorney and upon approval by the circuit court or a justice of the supreme court.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ATTORNEY GENERAL.

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

1 The attorney general shall appear as counsel for the
2 state in all causes pending in the supreme court of
3 appeals, or in any federal court, in which the state is
4 interested; he shall appear in any cause in which the
5 state is interested that is pending in any other court in
6 the state, on the written request of the governor, and
7 when such appearance is entered he shall take charge
8 of and have control of such cause; he shall defend all
9 actions and proceedings against any state officer in his
10 official capacity in any of the courts of this state or any
11 of the federal courts when the state is not interested in
12 such cause against such officer, but should the state be
13 interested against such officer, he shall appear for the
14 state; he shall institute and prosecute all civil actions
15 and proceedings in favor of or for the use of the state
16 which may be necessary in the execution of the official
17 duties of any state officer, board or commission on the
18 written request of such officer, board or commission; he
19 shall, when requested by the prosecuting attorney of a
20 county wherein a state institution of correction is
21 located, provide attorneys for appointment as special
22 prosecuting attorneys to assist the prosecuting attorney
23 of said county in the prosecution of criminal proceedings
24 when, in the opinion of the circuit judge of said county,
25 or a justice of the West Virginia supreme court of
26 appeals, extraordinary circumstances exist at said
27 institution which render the financial resources of the

28 office of the prosecuting attorney inadequate to prose-
29 cute said cases; he may consult with and advise the
30 several prosecuting attorneys in matters relating to the
31 official duties of their office, and may require a written
32 report from them of the state and condition of the
33 several causes, in which the state is a party, pending in
34 the courts of their respective counties; he may require
35 the several prosecuting attorneys to perform, within the
36 respective counties in which they are elected, any of the
37 legal duties required to be performed by the attorney
38 general which are not inconsistent with the duties of the
39 prosecuting attorneys as the legal representatives of
40 their respective counties; when the performance of any
41 such duties by the prosecuting attorney conflicts with
42 his duties as the legal representative of his county, or
43 for any reason any prosecuting attorney is disqualified
44 from performing such duties, the attorney general may
45 require the prosecuting attorney of any other county to
46 perform such duties in any county other than that in
47 which such prosecuting attorney is elected and for the
48 performance of which duties outside of the county in
49 which he is elected the prosecuting attorney shall be
50 paid his actual traveling and other expenses out of the
51 appropriation for contingent expenses for the depart-
52 ment for which such services are rendered; the attorney
53 general shall keep in proper books, a register of all
54 causes prosecuted or defended by him in behalf of the
55 state or its officers and of the proceedings had in
56 relation thereto, and deliver the same to his successor
57 in office; and he shall preserve in his office all his
58 official opinions and publish the same in his biennial
59 report.

60 Upon request of any member of the West Virginia
61 national guard who has been named defendant in any
62 civil action arising out of that guardsman's action while
63 under orders from the governor relating to national
64 guard assistance in disasters and civil disorders, the
65 attorney general shall appear as counsel for and
66 represent such guardsman.

CHAPTER 14

(S. B. 90—By Senator Tucker)

[Passed February 17, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the one-year limitation on letters of credit issued by state-chartered banking institutions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

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

1 Any state-chartered banking institution shall have
2 and exercise all of the powers necessary for, or incid-
3 ental to, the business of banking, and, without limiting
4 or restricting such general powers, it shall have the
5 right to buy or discount promissory notes and bonds,
6 negotiate drafts, bills of exchange and other evidences
7 of indebtedness, borrow money, receive deposits on such
8 terms and conditions as its officers may prescribe, buy
9 and sell exchange, bank notes, bullion or coin, loan
10 money on personal or other security, rent safe-deposit
11 boxes and receive on deposit, for safekeeping, jewelry,
12 plate, stocks, bonds and personal property of whatsoever
13 description and provide customer services incidental to
14 the business of banking, including, but not limited to,
15 the issuance and servicing of and lending money by
16 means of credit cards as letters of credit or otherwise.
17 Any state-chartered banking institution may accept, for
18 payment at a future date, not to exceed one year, drafts
19 drawn upon it by its customers. Any state-chartered
20 banking institution may issue letters of credit, with a
21 specified expiration date or for a definite term, autho-

22 rizing the holders thereof to draw drafts upon it or its
23 correspondents, at sight or on time. Any such banking
24 institution may organize, acquire, own, operate, dispose
25 of, and otherwise manage wholly owned subsidiary
26 corporations for purposes incident to the banking
27 powers and services authorized by this chapter.

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

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

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

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

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

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

53 Any real estate acquired by any such banking
54 institution under subdivisions (c) and (d) shall be
55 disposed of by the banking institution at the earliest
56 practicable date, but the officers thereof shall have a
57 reasonable discretion in the matter of the time to dispose
58 of such property in order to save the banking institution
59 from unnecessary losses.

60 In every case such property shall be disposed of within
61 five years from the time it is acquired by the banking
62 institution, unless an extension of time is given in
63 writing by the commissioner of banking.

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

CHAPTER 15

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

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

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

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES
GENERALLY.**

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

- 1 (a) (1) The total loans and extensions of credit by a
- 2 state-chartered banking institution to a person outstand-
- 3 ing at one time and not fully secured, as determined in

4 a manner consistent with subdivision (2) of this subsection,
5 tion, by collateral having a market value at least equal
6 to the amount of the loan or extension of credit shall not
7 exceed fifteen percent of the unimpaired capital and
8 unimpaired surplus of that state-chartered banking
9 institution.

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

21 (3) For the purposes of this subsection:

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

31 (B) The term "person" shall include an individual,
32 partnership, society, association, firm, institution,
33 company, public or private corporation, state, govern-
34 mental agency, bureau, department, division or instru-
35 mentality, political subdivision, county commission,
36 municipality, trust, syndicate, estate or any other legal
37 entity whatsoever, formed, created or existing under the
38 laws of this state or any other jurisdiction.

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

41 (A) Loans or extensions of credit arising from the
42 discount of commercial or business paper evidencing an
43 obligation to the person negotiating it with recourse

44 shall not be subject to any limitation based on capital
45 and surplus;

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

50 (C) Loans and extensions of credit secured by bills of
51 lading, warehouse receipts, or similar documents
52 transferring or securing title to readily marketable
53 staples shall be subject to a limitation of thirty-five
54 percent of capital and surplus in addition to the general
55 limitations if the market value of the staples securing
56 each additional loan or extension of credit at all times
57 equals or exceeds one hundred fifteen percent of the
58 outstanding amount of such loan or extension of credit.
59 The staples shall be fully covered by insurance whe-
60 never it is customary to insure such staples;

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

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

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

82 (G) Loans or extensions of credit to any banking
83 institution or to any receiver, conservator or other agent

84 in charge of the business and property of such banking
85 institution or other federally insured depository institu-
86 tion, when such loans or extensions of credit are
87 approved by the commissioner of banking, shall not be
88 subject to any limitation based on capital and surplus;

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

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

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

120 (ii) Loans and extensions of credit which arise from
121 the discount by dealers in livestock of paper given in
122 payment for livestock, which paper carries a full
123 recourse endorsement or unconditional guarantee of the
124 seller and which are secured by the livestock being sold,

125 shall be subject under this section, notwithstanding the
126 collateral requirements set forth in subdivision (2) of
127 this subsection, to a limitation of twenty-five percent of
128 such capital and surplus;

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

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

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

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

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

157 (b) (1) Except as hereinafter provided or otherwise
158 permitted by law, nothing herein contained shall
159 authorize the purchase by a state-chartered banking
160 institution for its own account of any shares of stock of
161 any corporation: *Provided*, That a state-chartered
162 banking institution may purchase and sell securities and
163 stock without recourse, solely upon the order and for the
164 account of customers.

165 (2) In no event shall the total amount of investment
166 securities of any one obligor or maker held by a state-
167 chartered banking institution for its own account,
168 exceed fifteen percent of the unimpaired capital and
169 unimpaired surplus of that state-chartered banking
170 institution.

171 (3) For purposes of this subsection:

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

178 (B) The term "person" shall include any individual,
179 partnership, society, association, firm, institution,
180 company, public or private corporation, state, govern-
181 mental agency, bureau, department, division or instru-
182 mentality, political subdivision, county commission,
183 municipality, trust, syndicate, estate or any other legal
184 entity whatsoever, formed, created or existing under the
185 laws of this state or any other jurisdiction.

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

188 (A) Obligations of the United States;

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

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

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

198 (E) Obligations which are insured by the secretary of
199 housing and urban development hereafter in this
200 sentence referred to as the "secretary" pursuant to
201 section 207 of the National Housing Act (12 USC §
202 1713), if the debentures to be issued in payment of such
203 insured obligations are guaranteed as to principal and
204 interest by the United States;

205 (F) Obligations, participations or other instruments of
206 or issued by the federal national mortgage association
207 or the government national mortgage association, or
208 mortgages, obligations or other securities which are or
209 ever have been sold by the federal home loan mortgage
210 corporation pursuant to Section 305 or Section 306 of the
211 Federal Home Loan Mortgage Corporation Act (12 USC
212 § 1454 or § 1455);

213 (G) Obligations of the federal financing bank;

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

216 (I) Obligations of the environmental financing
217 authority;

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

232 (K) Obligations of a public housing agency as that
233 term is defined in the United States Housing Act of
234 1937, as amended, (42 USC Sec. 1401 et seq.) as are
235 secured:

236 (i) By an agreement between the public housing
237 agency and the secretary in which the public housing
238 agency agrees to borrow from the secretary, and the
239 secretary agrees to lend to the public housing agency,
240 prior to the maturity of such obligations, moneys in an
241 amount which, together with any other moneys irrevoc-
242 ably committed to the payment of interest on such
243 obligations, will suffice to pay the principal of such

244 obligations with interest to maturity thereon, which
245 moneys under the terms of said agreement are required
246 to be used for the purpose of paying the principal of and
247 the interest on such obligations at their maturity;

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

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

279 (L) Obligations of a corporation owning the property
280 in which that state-chartered banking institution is
281 located when that state-chartered banking institution
282 has an unimpaired capital and surplus of not less than
283 one million dollars or when approved in writing by the
284 commissioner of banking.

285 (5) Notwithstanding any other provision in this
286 subsection, a state-chartered banking institution may
287 purchase for its own account shares of stock issued by
288 a corporation authorized to be created pursuant to Title
289 IX of the Housing and Urban Development Act of 1968
290 (42 USC Sec. 3931 et seq.) and may make investments
291 in a partnership, limited partnership, or joint venture
292 formed pursuant to section 907 (a) or 907 (c) of that act
293 (42 USC Sec. 3937 (a) or (c)), and may purchase shares
294 of stock issued by any West Virginia housing corpora-
295 tion and may make investments in loans and commit-
296 ments for loans to any such corporation: *Provided*, That
297 in no event shall the total amount of such stock held for
298 its own account and such investments in loans and
299 commitments made by the state-chartered banking
300 institution exceed at any time five percent of the
301 unimpaired capital and unimpaired surplus of that
302 state-chartered banking institution.

303 (6) Notwithstanding any other provision in this
304 subsection, a state-chartered banking institution may
305 purchase, for its own account, shares of stock of small
306 business investment companies chartered under the
307 laws of this state, which are licensed under the act of
308 Congress known as the "Small Business Investment Act
309 of 1958," as amended, and of business development
310 corporations created and organized under the act of the
311 Legislature known as the "West Virginia Business
312 Development Corporation Act," as amended: *Provided*,
313 That in no event shall any such state-chartered banking
314 institution hold shares of stock in small business
315 investment companies and/or business development
316 corporations in any amount aggregating more than
317 fifteen percent of the unimpaired capital and unim-
318 paired surplus of that state-chartered banking
319 institution.

320 (7) Notwithstanding any other provision of this
321 subsection, a state-chartered banking institution may
322 purchase for its own account shares of stock of a
323 bankers' bank or a bank holding company which owns
324 or controls such bankers' bank, but in no event shall the
325 total amount of such stock held by such state-chartered
326 banking institution exceed at any time fifteen percent

327 of the unimpaired capital and unimpaired surplus of
328 that state-chartered banking institution and in no event
329 shall the purchase of such stock result in that state-
330 chartered banking institution acquiring more than
331 twenty percent of any class of voting securities of such
332 bankers' bank or of the bank holding company which
333 owns or controls such bankers' bank.

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

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

351 (c) No officer or director of any banking institution or
352 the commissioner of banking or any employee of the
353 department of banking shall borrow, directly or
354 indirectly, from the banking institution with which he
355 is connected, or which is subject to examination by the
356 commissioner of banking, any sum of money without the
357 prior approval of a majority of the board of directors
358 or discount committee of the banking institution, or of
359 any duly constituted committee whose duties include
360 those usually performed by a discount committee,
361 embodied in a resolution adopted by a majority vote of
362 such board or committee, exclusive of the director to
363 whom the loan is made. If any officer, clerk or other
364 employee of any bank shall own or control a majority
365 of the stock of any other corporation, a loan to such
366 corporation shall, for the purpose of this section,
367 constitute a loan to such officer, clerk or other employee.

368 (d) Securities purchased by a banking institution
369 shall be entered upon the books of the bank at actual
370 cost. For the purpose of calculating the undivided
371 profits applicable to the payment of dividends, securities
372 shall not be valued at a valuation exceeding their
373 present cost as determined by amortization, that is, by
374 deducting from the cost of a security purchased at a
375 premium, and charging to profit and loss a sum
376 sufficient to bring it to par at maturity.

CHAPTER 16

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

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

AN ACT to amend article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-five, relating to the uniform vendors reciprocity act; preference in awarding bids in the purchase of commodities or printing.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

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

- 1 (a) This section may be cited as the "Uniform Vendors
- 2 Reciprocity Act."
- 3 (b) Other provisions of this article notwithstanding, in
- 4 any instance that a purchase of commodities or printing
- 5 by the director or by a state department is required
- 6 under the provisions of this article to be made upon
- 7 competitive bids:

8 (1) Preference for the same type of work shall be
9 given to vendors resident in the state of West Virginia
10 over vendors resident in a state that provides for a
11 preference in favor of vendors resident in that state over
12 vendors resident in the state of West Virginia; and

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

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

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

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

CHAPTER 17

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

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

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

Be it enacted by the Legislature of West Virginia:

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

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

§13-2C-3. Definitions.

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

3 (a) "Commercial project" means real or personal
4 property or both, including any buildings, improve-
5 ments, additions, extensions, replacements, appurtenan-
6 ces, lands, rights in land, water rights, franchises,
7 machinery, equipment, furnishings, landscaping, utili-
8 ties, railroad spurs and sidings, parking facilities,
9 farms, parking wharfs, approaches and roadways or any
10 number or combination of the foregoing necessary or
11 desirable in connection with a commercial enterprise or
12 incidental thereto and includes, without limiting the
13 generality of the foregoing, hotels and motels and
14 related facilities, nursing homes and other health care
15 facilities, facilities for participatory or spectator sports,
16 conventions or trade show facilities, airport facilities,
17 shopping centers, office buildings, residential real
18 property for family units, and mass commuting facili-
19 ties, dormitories, apartments and other housing facili-
20 ties for the students and faculties of institutions of
21 higher education, instructional buildings and other
22 facilities used in connection with nonpublic institutions
23 of higher education, facilities providing housing for the
24 elderly, including, but not limited to, life care facilities,
25 congregate living facilities and adult residential
26 facilities.

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

30 (c) "Governmental body" means the county commis-
31 sion, a town or city council or any other governing body
32 in lieu thereof.

33 (d) "Industrial project" means any site, structure,
34 building, industrial park, water dock, wharf or port
35 facilities, fixtures, machinery, equipment and related
36 facility, including real and personal property, or any
37 combination thereof, suitable as a factory, mill or shop,
38 or processing, assembly, manufacturing or fabricating
39 project, or warehouse or distribution facility, or
40 facilities for the extraction, production or distribution of
41 mineral resources and related facilities, or sewage or
42 solid waste disposal facilities, or facilities for the local
43 furnishing of electric energy or gas, or facilities for the
44 furnishing of water, if available on reasonable demand
45 to members of the general public, or storage or training
46 facilities related to any of the foregoing, or research or
47 development facility or pollution abatement or control
48 facility and includes the reconstruction, modernization
49 and modification of any existing industrial project for
50 the abatement or control of industrial pollution.

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

CHAPTER 18

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

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

AN ACT to amend and reenact section twenty-one, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to issuance of private activity bonds and establishing an allocation and disbursements procedure for the annual state ceiling for tax-exempt private activity bonds in compliance with the provisions of section one hundred

forty-six of the United States Internal Revenue Code of one thousand nine hundred eighty-six; granting the West Virginia housing development fund a set portion of the annual state ceiling for tax-exempt private activity bonds; and providing for reservation of funds, limitations, unused allocation, expirations and carryovers.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

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

17 (1) Fifty million dollars shall be allocated to the West
18 Virginia housing development fund for the purpose of
19 issuing qualified mortgage bonds, qualified mortgage

20 certificates or bonds for qualified residential rental
21 projects.

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

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

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

45 (d) Notwithstanding the foregoing, in the event the
46 state allocation is fully distributed prior to the first day
47 of July of each calendar year, the governor's office of
48 community and industrial development may reallocate
49 all or any portion of the then remaining county
50 allocation to the state upon the director's notification of
51 such action to the clerk of the several county commis-
52 sions. Any reallocations of less than all of the then
53 remaining county allocation shall be made proportion-
54 ately from each county's apportionment then remaining.

55 (e) Distribution of both the county and state alloca-
56 tions to lessees, purchasers or owners of proposed
57 commercial or industrial projects shall be on a first
58 come, first serve basis and shall not be distributed or

59 allocated for any project until the governmental body
60 seeking the same shall submit an application for
61 reservation of funds as provided in subsection (f) of this
62 section. The governmental body must first adopt an
63 inducement resolution approving the prospective issu-
64 ance of bonds and setting forth the amount of bonds to
65 be issued. Each governmental body seeking an alloca-
66 tion of the state ceiling following the adoption of such
67 inducement resolution shall submit a notice of induce-
68 ment signed by its clerk, secretary or recorder or other
69 appropriate official to the governor's office of commu-
70 nity and industrial development. Such notice shall
71 include such information as may be required by the
72 governor's office of community and industrial develop-
73 ment by rule or regulation.

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

79 (1) The date of the notice of reservation of funds;

80 (2) The identity of the governmental body issuing the
81 bonds;

82 (3) The date of inducement and the prospective date
83 of issuance;

84 (4) The name of the entity for which the bonds are to
85 be issued;

86 (5) The amount of the bond issue, or, if the amount
87 of the bond issue for which a reservation of funds has
88 been made has been increased, the amount of the
89 increase;

90 (6) The type of issue; and

91 (7) A description of the project for which the bonds
92 are to be issued.

93 (g) (1) Upon receipt of the notice of reservation of
94 funds by the governor's office of community and
95 industrial development, such office shall immediately

96 note upon the face of such notice the date and time the
97 same was so received and shall within ten days certify
98 to the governmental body submitting the same (A) that
99 the statewide ceiling has not been exceeded, if such be
100 the case, and (B) that the amount of the bond issue has
101 been allocated and reserved in the name of such
102 governmental body for the project for which the bonds
103 are to be issued and, thereafter, the amount of such bond
104 issue shall be so allocated and reserved.

105 (2) In the event the amount required in the notifica-
106 tion of reservation of funds, as provided for in subdivi-
107 sion (1) of this subsection, exceeds the apportionment
108 available to that county from the county allocation, the
109 governor's office of community and industrial develop-
110 ment shall immediately notify the governmental body
111 proposing to issue such bonds of that fact and such body
112 may apply to such office for an apportionment to the
113 extent of such excess from the state allocation.

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

120 (i) If the bond issue for which a reservation has been
121 made has not been finally closed within one hundred
122 twenty days of the date of the certification of reservation
123 to be made by the governor's office of community and
124 industrial development, as required by the provisions of
125 subsection (g) of this section, or the thirty-first day of
126 December following such date of certification if sooner
127 and a statement of bond closure which has been
128 executed by the clerk, secretary, recorder or other
129 appropriate official of the governmental body reserving
130 the same has not been received by such office within
131 that time, then such reservation shall expire and be
132 deemed to have been forfeited and the funds so reserved
133 shall be released and revert to the county and/or state
134 allocation, as the case may be, from which the funds
135 were originally reserved and allocation will then be

136 made available for other qualified issues in accordance
137 with this section and the Internal Revenue Code:
138 *Provided*, That, as to any notice of reservation of funds
139 received by the governor's office of community and
140 industrial development during the month of December
141 in any calendar year with respect to any project
142 qualifying as an elective carry forward pursuant to
143 section 146(f)(5) of the Internal Revenue Code, such
144 reservation of funds and the allocation to which the
145 same relates shall not expire or be subject to forfeiture:
146 *Provided, however*, That any unused state ceiling as of
147 the thirty-first day of December in any year not
148 otherwise subject to a carry forward pursuant to section
149 146(f) of the Internal Revenue Code shall be allocated
150 to the West Virginia housing development fund, which
151 shall be deemed to have elected to carry forward the
152 unused state ceiling for the purpose of issuing qualified
153 mortgage bonds, qualified mortgage credit certificates
154 or bonds for qualified residential rental projects, each
155 as defined in the Internal Revenue Code. All requests
156 for subsequent reservation of funds and reallocation
157 upon loss of a reservation pursuant to this section will
158 be treated in the same manner as a new notice of
159 reservation of funds in accordance with subsections (f)
160 and (g) above.

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

170 (k) The amendments to this section adopted by the
171 Legislature at the regular session thereof, held in the
172 year one thousand nine hundred eighty-seven, shall
173 apply and be effective with respect to such year and to
174 all subsequent years.

CHAPTER 19

(S. B. 746—Originating in the Senate Committee on the Judiciary)

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

AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-three, relating to the West Virginia boundary commission act; short title; legislative findings and intent; definitions; West Virginia boundary commission created; appointment; terms in office; expenses; powers and duties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. WEST VIRGINIA BOUNDARY COMMISSION.

§29-23-1. Definitions.

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

§29-23-1. Definitions.

1 As used in this article:

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

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

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

1 (a) There is hereby created a boundary commission
2 which shall consist of three members, who shall be
3 residents and citizens of the state, all of whom shall have
4 experience involving map reading or surveying. The
5 commission members shall investigate state, county and

6 municipal boundary disputes when requested to do so by
7 the governor or Legislature. The commission members
8 shall be appointed by the governor, by and with the
9 advice and consent of the Senate, no later than the first
10 day of July, one thousand nine hundred eighty-seven. No
11 more than two members may belong to the same
12 political party. The commission members shall serve a
13 term concurrent with that of the governor's term in
14 office. Commission members may be reappointed to
15 additional terms.

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

19 (c) The commission shall have the authority to:

20 (1) Establish a boundary line which shall be pre-
21 sumed correct unless proven otherwise in a court of law;

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

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

27 (4) Seek the assistance of the West Virginia geological
28 and economic survey to identify the location of any
29 boundary line in dispute and the recommended place-
30 ment of marker locations;

31 (5) Meet with similar commissions or bodies of any of
32 the several states contiguous with this state, whose
33 purpose in their respective states is to establish state
34 boundary lines coterminous with the boundary of the
35 state of West Virginia and submit findings and recom-
36 mendations to the Legislature, applicable to the location
37 of any particular boundary segment in question;

38 (6) Recommend to the Legislature that appropriate
39 legislation be enacted, establishing the true boundary
40 line at those portions of the state boundary that are in
41 dispute with another state or whose location is uncer-
42 tain: *Provided*, That the contiguous state agrees with the
43 recommendation;

44 (7) Recommend to the Legislature, where no agree-
45 ment can be attained with another state as to the actual
46 location of any portion of this state's boundary line,
47 proper legislation to direct that the attorney general
48 proceed under the constitution of the United States with
49 litigation to adjudicate the exact and true location of any
50 boundary line in dispute or whose precise location is
51 unascertainable; and

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

CHAPTER 20

(H. B. 3040—By Delegate Williams)

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

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

§5E-1-4. Definitions.

1 As used in this article, the following terms shall have
2 the meanings ascribed to them in this section, unless the
3 context in which the term is used clearly requires
4 another meaning or a specific different definition is
5 provided.

6 (a) "Board" means the board of directors of the West
7 Virginia industrial and trade jobs development corpo-
8 ration, provided for in article two, chapter five-c of this
9 code.

10 (b) "Capital base" means equity capital or net worth.

11 (c) "Certified West Virginia capital company" means:

12 (1) A West Virginia business development corporation
13 created pursuant to article fourteen, chapter thirty-one
14 of this code; or

15 (2) A profit or nonprofit entity organized and existing
16 under the laws of this state, created for the purpose of
17 making venture or risk capital available to qualified
18 investments, that has been certified by the board.

19 (d) "Qualified investment" means a debt or equity
20 financing of a West Virginia business but only if the
21 business is engaged in one or more of the following
22 activities: Manufacturing; agricultural production or
23 processing; forestry production or processing; mineral
24 production or processing, except for conventional oil and
25 gas exploration; service industry; transportation;
26 research and development of products or processes
27 associated with any of the activities previously enumer-
28 ated above; tourism; and wholesale or retail distribution
29 activities within the state.

30 (e) "Qualified West Virginia capital company" means
31 a West Virginia capital company that has been desig-
32 nated by the board as a qualified capital company under
33 the provisions of section six of this article.

34 (f) "State" means the state of West Virginia.

§5E-1-6. Qualification of West Virginia capital companies.

1 (a) The board shall qualify West Virginia capital

2 companies commencing after the effective date of this
3 article. A company seeking to be qualified as a West
4 Virginia capital company must make written applica-
5 tion to the board on forms provided by the board. The
6 application must contain the information required by
7 section ten of this article. Further, the application must
8 specify the level of capitalization of the company.

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

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

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

1 The board shall qualify West Virginia capital com-
2 panies that have been capitalized at a minimum level
3 of one million dollars. Capitalization of the company
4 may be increased pursuant to regulation of the board.

§5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a
2 single qualified company may not exceed two million
3 dollars. Capitalization of the company may be increased
4 pursuant to regulation of the board.

5 (b) The total credits authorized by the board for all
6 companies may not exceed a total of ten million dollars
7 each fiscal year. The board shall allocate these credits
8 to qualified companies in the order that said companies
9 are qualified.

10 (c) Any investor, including an individual, partnership
11 or corporation who makes a capital investment in a
12 qualified West Virginia capital company is entitled to
13 a tax credit equal to fifty percent of the investment. The
14 credit allowed by this article shall be taken after all
15 other credits allowed by chapter eleven of this code. It
16 shall be taken against the same taxes and in the same
17 order as set forth in subsections (c) through (i), section
18 five, article thirteen-c, chapter eleven of this code. The
19 credit for investments by a partnership or by a
20 corporation electing to be treated as a Subchapter S

21 corporation may be divided pursuant to election of
22 partners or shareholders.

23 (d) The tax credit allowed under this section is to be
24 credited against the taxpayer's tax liability for the
25 taxable year in which the investment in a qualified West
26 Virginia capital company is made. If the amount of the
27 tax credit exceeds the taxpayer's tax liability for the
28 taxable year, the amount of the credit which exceeds the
29 tax liability may be carried back or may be carried
30 forward in accordance with the provisions of section
31 forty-six (b) of the Internal Revenue Code of 1954, as
32 amended.

33 (e) The tax credit provided for in this section is
34 available only to those taxpayers whose investment in a
35 qualified West Virginia capital company occurs after
36 the first day of July, one thousand nine hundred eighty-
37 six.

§5E-1-10. Application requirements.

1 Each company shall make application to the board on
2 forms provided therefor, which shall set forth:

3 (1) Capitalization level of capital company;

4 (2) Purpose of the company;

5 (3) Names of investors;

6 (4) A process for disclosing to investors the tax credit
7 available pursuant to this article. Such disclosure shall
8 clearly set forth that no tax credit will be available until
9 the qualification of said company shall be granted by the
10 board and the disclosure of immunity of the state for
11 damages is provided to said investors; and

12 (5) The location of the escrow account which has been
13 established for investors for the period of time between
14 the investment and the qualification of the capital
15 company by the board.

§5E-1-12. Qualified investments.

1 (a) A qualified West Virginia capital company must
2 use its capital base to make qualified investments
3 according to the following schedule:

4 (1) At least twenty percent of its capital base within
5 the first year of the date on which the capital company
6 was designated as qualified by the board;

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

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

13 (b) The board shall annually audit the certified audit
14 of each qualified company, as required by section
15 sixteen of this article, and the results of said audit shall
16 be used to notify the tax commissioner of any companies
17 that are not in compliance with this section.

18 (c) A qualified West Virginia capital company that
19 fails to make qualified investments pursuant to subsec-
20 tion (a) of this section shall pay to the tax commissioner
21 a penalty equal to all of the tax credits allowed to the
22 taxpayers investing in said company with interest at the
23 rate of one and one-half percent per month, compounded
24 monthly, from the date the tax credits were certified as
25 allocated to the qualified West Virginia capital com-
26 pany. The tax commissioner shall give notice to the
27 company of any penalties under this section. The tax
28 commissioner may abate said penalty upon written
29 request if the capital company establishes reasonable
30 cause for the failure to make qualified investments. The
31 tax commissioner shall deposit any amounts received
32 under this subsection in the state general fund.

§5E-1-16. Examination.

1 (a) Annually each qualified capital company shall
2 cause its books and records to be audited by an
3 independent certified public accountant in accordance
4 with generally accepted auditing and accounting
5 principles. In addition to the performance of a financial
6 audit, the audit shall address the methods of operation
7 and conduct of the business of the West Virginia capital
8 company to determine compliance with this article and
9 that the funds received by the company have been

10 invested within the time limits required by this article.
11 Upon completion, a copy of the audit report shall be
12 certified and sent to the board.

13 (b) The board may examine, under oath, any of the
14 officers, directors, agents, employees or investors of a
15 West Virginia capital company regarding the affairs
16 and business of the company. The board may issue
17 subpoenas and subpoenas duces tecum and administer
18 oaths. Refusal to obey such a subpoena or subpoena
19 duces tecum may at once be reported to the circuit court
20 of the county in which the company is located or the
21 persons subpoenaed reside and the circuit court shall
22 enforce obedience to the subpoena or subpoena duces
23 tecum in the manner provided by law for compliance
24 with a subpoena or subpoena duces tecum issued by a
25 circuit court of this state.

CHAPTER 21

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

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

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

Be it enacted by the Legislature of West Virginia:

That article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

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

Chapter

51. Courts and Their Officers.

48A. Enforcement of Family Obligations.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. SUPREME COURT OF APPEALS.

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

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

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

13 (c) The assistant director shall:

14 (1) Develop and recommend guidelines for the con-
15 duct, operations and procedures of the offices of the
16 family law masters and the masters' employees, includ-
17 ing, but not limited to, the following:

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

20 (B) Resolution of conflicts and the transfer of part or
21 all of the responsibilities for a case from one office to
22 another in situations considered appropriate.

- 23 (C) The hours of employment and location of places of
24 employment.
- 25 (2) Provide training programs for the family law
26 masters and other employees of the office to better
27 enable them to carry out the duties described in article
28 four, chapter forty-eight-a of this code.
- 29 (3) Gather and monitor relevant statistics.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

Article

2. West Virginia Child Advocate Office.
5. Remedies for the Enforcement of Support Obligations and Visitation.
7. Revised Uniform Reciprocal Enforcement of Support Act.

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

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

§48A-2-22. Family law masters fund.

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

- 1 (a) The director may promulgate legislative rules in
2 accordance with the provisions of article three, chapter
3 twenty-nine-a of this code where such rules are required
4 to implement the provisions of this chapter.
- 5 (b) The director shall annually prepare a proposed
6 budget for the next fiscal year, and submit such budget
7 to the commissioner. Such budget shall include all sums
8 necessary to support the activities of the child advocate
9 office.
- 10 (c) In addition to any other duties required by this
11 chapter, the director shall:
- 12 (1) Develop and recommend guidelines for the con-
13 duct, operations and procedures of the office and his or
14 her employees, including, but not limited to, the
15 following:
- 16 (A) Case load and staffing standards for employees
17 who perform investigation and recommendation func-
18 tions, enforcement functions and clerical functions.

19 (B) Orientation programs for clients of the office.

20 (C) Public educational programs regarding domestic
21 relations law and community resources, including
22 financial and other counseling, and employment
23 opportunities.

24 (D) Model pamphlets and procedural forms, which
25 shall be distributed to each local office serving clients.

26 (2) Provide training programs for the children's
27 advocates and other employees of the office, to better
28 enable them to carry out the duties described in this
29 chapter.

30 (3) Gather and monitor relevant statistics.

31 (4) Develop and recommend guidelines to be used in
32 determining whether or not visitation has been wrong-
33 fully denied or custody has been abused.

34 (5) Develop standards and procedures for the transfer
35 of part or all of the responsibilities for a case from one
36 office to another in situations considered appropriate.

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

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

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

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

52 Of the nine members initially appointed, one public
53 member, one attorney and one professional shall be
54 appointed for a term of one year; one public member,
55 one attorney and one professional shall be appointed for
56 a term of two years; and one public member, one

57 attorney and one professional shall be appointed for a
58 term of three years. After the expiration of the initial
59 terms, appointments thereafter shall be made for terms
60 of three years. The commissioner shall fill any vacancies
61 resulting from death or resignation by appointment for
62 the unexpired term. Members of the advisory council
63 may be reappointed.

64 (e) The advisory committee established under subsec-
65 tion (d) of this section shall advise the director in the
66 performance of his or her duties under this section.
67 Advisory committee members shall be reimbursed for
68 their actual expenses for mileage, meals, and, if
69 necessary, lodging.

§48A-2-22. Family law masters fund.

1 The office and the clerks of the circuit courts shall,
2 on or before the last day of each month, transmit all fees
3 and costs received for the services of the office or the
4 family law master under this chapter to the state
5 treasurer for deposit in the state treasury to the credit
6 of a special revenue fund to be known as the "family law
7 masters fund," which is hereby created. All moneys
8 collected and received under this chapter and paid into
9 the state treasury and credited to the "family law
10 masters fund" shall be used solely for paying the costs
11 associated with the duties imposed upon the family law
12 masters under the provisions of this chapter. Such
13 moneys shall not be treated by the auditor and treasurer
14 as part of the general revenue of the state.

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

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

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

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

1 (a) The total of any matured, unpaid installments of
2 child support required to be paid by an order entered

3 or modified by a court of competent jurisdiction, or by
4 the order of a magistrate court of this state under the
5 prior enactments of this code, shall stand, by operation
6 of law, as a decretal judgment against the obligor owing
7 such support. A child support order shall not be
8 retroactively modified so as to cancel or alter accrued
9 installments of support. When an obligor is in arrears
10 in the payment of support which is required to be paid
11 by the terms of such order, an obligee may file an
12 "Affidavit of Accrued Support" with the clerk of the
13 circuit court, setting forth the particulars of such
14 arrearage, and requesting a writ of execution, sugges-
15 tion or suggestee execution. If the duty of support is
16 based upon a foreign support order, the obligee shall
17 first register the foreign support order with the clerk
18 in the same manner and with the same effect as such
19 orders are registered in actions under the revised
20 uniform reciprocal enforcement of support act, sections
21 thirty-four, thirty-five, thirty-seven and thirty-eight,
22 article seven of this chapter: *Provided*, That a copy of
23 the reciprocal enforcement of support law of the state
24 in which the order was made need not be filed with the
25 clerk.

26 (b) The affidavit may be filed in the county wherein
27 the obligee or the obligor resides, or where the obligor's
28 source of income is located.

29 (c) The affidavit may be filed when a payment
30 required by such order has been delinquent, in whole
31 or in part, for a period of fourteen days.

32 (d) The affidavit shall:

33 (1) Identify the obligee and obligor by name and
34 address, and shall list the obligor's social security
35 number or numbers, if known;

36 (2) Name the court which entered the support order
37 and set forth the date of such entry;

38 (3) State the total amount of accrued support which
39 has not been paid by the obligor;

40 (4) List the date or dates when support payments

41 should have been paid but were not, and the amount of
42 each such delinquent payment; and

43 (5) If known, the name and address of the obligor's
44 source of income.

45 (e) Upon receipt of the affidavit, the clerk shall issue
46 a writ of execution, suggestion or suggestee execution,
47 and shall mail a copy of the affidavit and a notice of the
48 filing of the affidavit to the obligor, at his last known
49 address. If the children's advocate is not acting on behalf
50 of the obligee in filing the affidavit, the clerk shall
51 forward a copy of the affidavit and the notice of the
52 filing to the children's advocate.

53 (f) The notice provided for in subsection (e) of this
54 section shall inform the obligor that if he or she desires
55 to contest the affidavit on the grounds that the amount
56 claimed to be in arrears is incorrect or that a writ of
57 execution, suggestion or suggestee execution is not
58 proper because of mistakes of fact, he or she must,
59 within fourteen days of the date of the notice, inform the
60 children's advocate in writing of the reasons why the
61 affidavit is contested and must request a meeting with
62 the children's advocate.

63 (g) Upon being informed by an obligor that he or she
64 desires to contest the affidavit, the children's advocate
65 shall inform the court of such fact, and the court shall
66 require the obligor to give security, post a bond, or give
67 some other guarantee to secure payment of overdue
68 support.

69 (h) The clerk of the circuit court shall make available
70 form affidavits for use under the provisions of this
71 section. Such form affidavits shall be provided to the
72 clerk by the child advocate office. The notice of the filing
73 of an affidavit shall be in a form prescribed by the child
74 advocate office.

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

1 (a) When, under the provisions of section three of this
2 article, a meeting is required between the obligor and

3 the children's advocate, if the obligee is a resident of this
4 state, such meeting shall be held with the children's
5 advocate in the county wherein the obligee resides. If the
6 obligee is a nonresident of this state, such meeting shall
7 be held with the children's advocate in the county
8 wherein the obligor resides or where the obligor's source
9 of income is located.

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

**ARTICLE 7. REVISED UNIFORM RECIPROCAL ENFORCEMENT
OF SUPPORT ACT.**

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

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

CHAPTER 22

(H. B. 2660—By Delegate Brown)

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

AN ACT to amend article five, chapter forty-nine of the code
of West Virginia, one thousand nine hundred thirty-one,

as amended, by adding thereto a new section, designated section thirteen-c, relating to development of a state plan for predisposition diagnostic evaluation of juveniles by the legislative commission on juvenile law and other state department representatives.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. JUVENILE PROCEEDINGS.

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

1 (a) The legislative commission on juvenile law and a
2 representative from the department of human services,
3 department of corrections, department of health,
4 department of education, public legal services, and the
5 juvenile justice committee shall develop a comprehen-
6 sive plan to establish a unified state system of predis-
7 position diagnostic evaluations for juveniles to be
8 submitted to the West Virginia Legislature no later than
9 the first day of January, one thousand nine hundred
10 eighty-eight.

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

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

16 (2) Standards and criteria shall be established for the
17 use of predisposition diagnostic evaluations for juveniles
18 including, but not limited to, the following: (i) Recom-
19 mendations on the use of community-based predisposi-
20 tion diagnostic services for juveniles; (ii) recommenda-
21 tions on the use of predisposition detention centers and
22 emergency home shelters for temporary housing during
23 predisposition diagnostic evaluations for juveniles who
24 cannot remain at home; (iii) recommendations on the use
25 of community mental health centers, schools, and other
26 appropriate facilities for the administration of predispo-

27 sition diagnostic evaluations for juveniles; (iv) a deter-
28 mination of the cost per child for current predisposition
29 diagnostic services for juveniles; and (v) a determination
30 of the estimated cost per child for community based
31 predisposition diagnostic services for juveniles.

CHAPTER 23

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

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

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

Be it enacted by the Legislature of West Virginia:

That article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section designated section thirteen-a; that sections three, nine, fourteen, nineteen and twenty, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended and reenacted; and that article eleven-a, chapter sixty-one of said code be amended by adding thereto a new section, designated section two-a, all to read as follows:

Chapter.

14. Claims Due and Against the State.

61. Crimes and Their Punishment.

**CHAPTER 14. CLAIMS DUE AND AGAINST
THE STATE.**

Article.

2. Claims Against the State.

2A. Compensation Awards to Victims of Crimes.

ARTICLE 2. CLAIMS AGAINST THE STATE.

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

1 (a) The Legislature finds and declares that innocent
2 persons who have been wrongly convicted of crimes and
3 subsequently imprisoned and innocent persons wrongly
4 arrested, charged with a crime or imprisoned, who have
5 subsequently been released when another person was
6 arrested, prosecuted and convicted of the same criminal
7 offense have been frustrated in seeking legal redress due
8 to a variety of substantive and technical obstacles in the
9 law and that such persons should have an available
10 avenue of redress over and above the existing tort
11 remedies to seek compensation for damages. The
12 Legislature intends by enactment of the provisions of
13 this section that those innocent persons who can
14 demonstrate by clear and convincing evidence that they
15 were unjustly arrested and imprisoned or unjustly
16 convicted and imprisoned be able to recover damages
17 against the state. In light of the substantial burden of
18 proof that must be carried by such persons, it is the
19 intent of the Legislature that the court, in exercising its
20 discretion as permitted by law regarding the weight and
21 admissibility of evidence submitted pursuant to this
22 section, shall, in the interest of justice, give due
23 consideration to difficulties of proof caused by the
24 passage of time, the death or unavailability of witnesses,
25 the destruction of evidence or other factors not caused
26 by such persons or those acting on their behalf.

27 (b) Any person arrested or imprisoned or convicted
28 and subsequently imprisoned for one or more felonies or
29 misdemeanors against the state which he did not
30 commit may, under the conditions hereinafter provided,
31 present a claim for damages against the state.

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

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

59 (e) The claim shall state facts in sufficient detail to
60 permit the court to find that claimant is likely to
61 succeed at trial in proving that (1) in the case of an
62 unjust arrest or imprisonment with a warrant, informa-
63 tion or indictment which was subsequently dismissed
64 that another person was arrested or prosecuted and
65 convicted for the same offense or offenses, and (2) in the
66 case of an unjust conviction and imprisonment that he
67 did not commit any of the acts charged in the accusatory

68 instrument or his acts or omissions charged in the
69 accusatory instrument did not constitute a felony or
70 misdemeanor against the state, and (3) he did not by his
71 own conduct cause or bring about his conviction. The
72 claim shall be verified. If the court finds after reading
73 the claim that claimant is not likely to succeed at trial,
74 it shall dismiss the claim, either on its own motion or
75 on the motion of the state.

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

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

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

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

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

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

106 (g) If the court finds that the claimant is entitled to

107 a judgment, it shall award damages in such sum of
108 money as the court determines will fairly and reason-
109 ably compensate him.

110 (h) Any person claiming compensation under this
111 section based on a pardon that was granted before the
112 effective date of this section or the dismissal of an
113 accusatory instrument that occurred before the effective
114 date of this section shall file his claim within two years
115 after the effective date of this section. Any person
116 claiming compensation under this section based on a
117 pardon that was granted on or after the effective date
118 of this section or the dismissal of an accusatory
119 instrument that occurred on or after the effective date
120 of this section shall file his claim within two years after
121 the pardon or dismissal.

122 (i) Any person claiming compensation under this
123 section based on the dismissal of a felony charge or
124 charges against him when another person is subse-
125 quently charged, arrested and convicted of the same
126 felony charge or charges based upon a dismissal of the
127 felony charge or charges that occurred before the
128 effective date of this section shall file his claim within
129 one year after the effective date of this section.

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-3. Definitions.

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

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

§14-2A-19. Attorney and witness fees.

§14-2A-20. Procedure for certification and payment of claims.

§14-2A-3. Definitions.

1 As used in this article, the term:

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

5 (1) A victim;

6 (2) A dependent, spouse or minor child of a deceased

7 victim; or in the event that the deceased victim is a
8 minor, the parents, legal guardians and siblings of the
9 victim;

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

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

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

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

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

32 (3) Social security, medicare and medicaid;

33 (4) State-required, temporary, nonoccupational dis-
34 ability insurance; other disability insurance;

35 (5) Workers' compensation;

36 (6) Wage continuation programs of any employer;

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

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

42 (9) That portion of the proceeds of all contracts of

43 insurance payable to the claimant on account of the
44 death of the victim which exceeds twenty-five thousand
45 dollars.

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

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

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

81 (f) "Allowable expense" means reasonable charges
82 incurred or to be incurred for reasonably needed

83 products, services and accommodations, including those
84 for medical care, prosthetic devices, eye glasses,
85 dentures, rehabilitation and other remedial treatment
86 and care.

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

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

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

113 (i) "Dependent's economic loss" means loss after a
114 victim's death of contributions of things of economic
115 value to his dependents, not including services they
116 would have received from the victim if he had not
117 suffered the fatal injury, less expenses of the dependents
118 avoided by reason of the victim's death.

119 (j) "Dependent's replacement service loss" means loss
120 reasonably incurred or to be incurred by dependents

121 after a victim's death in obtaining ordinary and
122 necessary services in lieu of those the victim would have
123 performed for their benefit if he had not suffered the
124 fatal injury, less expenses of the dependents avoided by
125 reason of the victim's death and not subtracted in
126 calculating dependent's economic loss.

127 (k) "Noneconomic detriment" means sorrow, mental
128 anguish, and solace which may include society, compan-
129 ionship, comfort, guidance, kindly offices and advice.

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

140 (m) "Contributory misconduct" means any conduct of
141 the claimant, or of the victim through whom the
142 claimant claims an award, that is unlawful or intention-
143 ally tortious and that, without regard to the conduct's
144 proximity in time or space to the criminally injurious
145 conduct has a casual relationship to the criminally
146 injurious conduct that is the basis of the claim.

**§14-2A-9. Claim investigators; compensation and ex-
penses; paralegals and support staff.**

1 The court of claims is hereby authorized to hire not
2 more than two claim investigators to be employed
3 within the office of the clerk of the court of claims, who
4 shall carry out the functions and duties set forth in
5 section twelve of this article. Claim investigators shall
6 serve at the pleasure of the court of claims and under
7 the administrative supervision of the clerk of the court
8 of claims. The compensation of claim investigators shall
9 be fixed by the court, and such compensation, together
10 with travel, clerical and other expenses of the clerk of
11 the court of claims relating to a claim investigator
12 carrying out his duties under this article, including the

13 cost of obtaining reports required by the investigator in
14 investigating a claim, shall be payable from the crime
15 victims compensation fund as appropriated for such
16 purpose by the Legislature.

17 The court of claims is hereby authorized to hire as
18 support staff such paralegal or paralegals and secretary
19 or secretaries to be employed within the office of the
20 clerk of the court of claims, necessary to carry out the
21 functions and duties of this article. Such support staff
22 shall serve at the will and pleasure of the court of claims
23 and under the administrative supervision of the clerk of
24 the court of claims.

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

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

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

15 (c) The judge or commissioner shall not approve an
16 award of compensation to a claimant who is the offender
17 or an accomplice of the offender who committed the
18 criminally injurious conduct, nor to any claimant if the
19 award would unjustly benefit the offender or his
20 accomplice. Unless a determination is made that the
21 interests of justice require that an award be approved
22 in a particular case, an award of compensation shall not
23 be made to the spouse of, or to a person living in the
24 same household with, the offender or accomplice of the
25 offender, or to the parent, child, brother or sister of the
26 offender or his accomplice.

27 (d) A judge or commissioner, upon a finding that the
28 claimant or victim has not fully cooperated with
29 appropriate law-enforcement agencies, or the claim
30 investigator, may deny a claim, reduce an award of
31 compensation, and may reconsider a claim already
32 approved.

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

37 (f) After reaching a decision to approve an award of
38 compensation, but prior to announcing such approval,
39 the judge or commissioner shall require the claimant to
40 submit current information as to collateral sources on
41 forms prescribed by the clerk of the court of claims. The
42 judge or commissioner shall reduce an award of
43 compensation or deny a claim for an award of compen-
44 sation that is otherwise payable to a claimant to the
45 extent that the economic loss upon which the claim is
46 based is or will be recouped from other persons,
47 including collateral sources, or if such reduction or
48 denial is determined to be reasonable because of the
49 contributory misconduct of the claimant or of a victim
50 through whom he claims. If an award is reduced or a
51 claim is denied because of the expected recoupment of
52 all or part of the economic loss of the claimant from a
53 collateral source, the amount of the award or the denial
54 of the claim shall be conditioned upon the claimant's
55 economic loss being recouped by the collateral source:
56 *Provided*, That if it is thereafter determined that the
57 claimant will not receive all or part of the expected
58 recoupment, the claim shall be reopened and an award
59 shall be approved in an amount equal to the amount of
60 expected recoupment that it is determined the claimant
61 will not receive from the collateral source, subject to the
62 limitation set forth in subsection (g) of this section.

63 (g) Except in the case of death, compensation payable
64 to a victim and to all other claimants sustaining
65 economic loss because of injury to that victim shall not
66 exceed thirty-five thousand dollars in the aggregate.
67 Compensation payable to a victim of criminally injur-

68 ious conduct which causes permanent injury may
69 include, in addition to economic loss, an amount up to
70 fifteen thousand dollars for emotional distress and pain
71 and suffering which are proximately caused by such
72 conduct. Compensation payable to all claimants because
73 of the death of the victim shall not exceed fifty thousand
74 dollars in the aggregate, but may include, in addition
75 to economic loss, compensation to the claimants specified
76 in paragraph (2), subdivision (a), section three of this
77 article, for sorrow, mental anguish and solace.

§14-2A-19. Attorney and witness fees.

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

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

§14-2A-20. Procedure for certification and payment of claims.

1 (a) The clerk shall certify to the department of

2 finance and administration, on or before the twentieth
3 day of November of each year, a list of all claims
4 pursuant to this article for which the court has made
5 a final determination and approved an award since the
6 last such certificate.

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

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

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

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

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

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

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

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

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

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.

§61-11A-2a. Notification of crime victims compensation fund.

1 Whenever the prosecuting attorney's office presents a
2 case to a grand jury or proceeds in the circuit court on
3 an information, the prosecutor or assistant prosecutor
4 shall within thirty days following said presentment or
5 information notify in writing each victim of the alleged
6 offense of the existence and basic provisions of article
7 two-a, chapter fourteen of this code. Nothing in this
8 section shall be construed as precluding the prosecuting
9 attorney's office from other notification to victims of
10 crime, or as creating a cause of action for damages
11 against any prosecuting attorney or their staff, or
12 against the state of West Virginia or any of its political
13 subdivisions.

CHAPTER 24

(H. B. 3063—By Delegate McCormick)

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

AN ACT to amend article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen-a, relating to compensation awards to victims of crime; requiring determination of fees owing to health care service providers; and providing for direct payment to providers from awards, beginning with awards made at the regular session of the Legislature, one thousand nine hundred eighty-seven.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-19a. Physician, hospital and other health care expenses.

1 As part of the order, the court, or a judge or
 2 commissioner thereof, shall determine whether fees are
 3 due and owing for health care services rendered by a
 4 physician, hospital or other health care provider
 5 stemming from an injury received as defined under this
 6 article. If such fees are due and owing, the court, or a
 7 judge or commissioner thereof, shall determine the
 8 amount or amounts and shall cause such reasonable fees
 9 to be paid out of the amount awarded the crime victim
 10 under this article directly to the physician, hospital or
 11 other health care provider. The requirements of this
 12 section shall be applicable to, and any such unpaid fees
 13 shall be determined and payable from, the awards made
 14 by the Legislature at regular session, one thousand nine
 15 hundred eighty-seven, and subsequently: *Provided*, That
 16 when a claim is filed under this section, the court shall

17 determine the total damages due the crime victim, and
18 where the total damages exceed the maximum amount
19 which may be awarded under this article, the amount
20 paid the health care provider shall be paid in the same
21 proportion to which the actual award bears to the total
22 damages determined by the court.

CHAPTER 25

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

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

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the board of regents, department of education, and the department of highways, to be moral obligations of the state and directing payment thereof.

1 The Legislature has heretofore made findings of fact
2 that the state has received the benefit of the commod-
3 ities and services rendered by certain claimants herein
4 and has considered claims against the state, the board
5 of regents, the department of education, and the
6 department of highways, agencies thereof, which have
7 arisen due to over-expenditures of the departmental
8 appropriations by officers of such state spending unit,
9 such claims having been previously considered by the
10 court of claims which also found that the state has
11 received the benefit of the commodities and services
12 rendered by each claimant, but were denied by the court
13 of claims on the purely statutory grounds that to allow
14 such claims would be condoning illegal acts contrary to
15 the laws of the state. The Legislature pursuant to its

16 findings of fact and also by the adoption of the findings
 17 of fact by the court of claims as its own, and, while not
 18 condoning such illegal acts, hereby declares it to be the
 19 moral obligation of the state to pay each such claim in
 20 the amount specified below, and directs the auditor to
 21 issue warrants upon receipt of a properly executed
 22 requisition supported by an itemized invoice, statement
 23 or other satisfactory document as required by section
 24 ten, article three, chapter twelve of the code of West
 25 Virginia, one thousand nine hundred thirty-one, as
 26 amended, for the payment thereof out of any fund
 27 appropriated and available for the purpose.

28 (a) *Claims against the Board of Regents:*

29 (TO BE PAID FROM GENERAL REVENUE FUND)

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

32 (b) *Claims against the Department of Education:*

33 (TO BE PAID FROM GENERAL REVENUE FUND)

34 From Acct. No. 2860-01

35	(1) Mary Elizabeth Binder	\$	330.00
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36 (c) *Claims against the Department of Highways:*

37 (TO BE PAID FROM STATE ROAD FUND)

38	(1) Appalachian Power Co.....	\$	19,635.17
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CHAPTER 26

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

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

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

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

1 The Legislature has considered the findings of fact
2 and recommendations reported to it by the court of
3 claims concerning various claims against the state and
4 agencies thereof, and in respect to each of the following
5 claims the Legislature adopts those findings of fact as
6 its own, and in respect of certain claims herein, the
7 Legislature has independently made findings of fact and
8 determinations of award and hereby declares it to be the
9 moral obligation of the state to pay each such claim in
10 the amount specified below, and directs the auditor to
11 issue warrants for the payment thereof out of any fund
12 appropriated and available for the purpose.

13 (a) *Claim against the Adjutant General:*

14 (TO BE PAID FROM GENERAL REVENUE FUND)

15 (1) Cabot Corporation \$ 4,347.92

16 (b) *Claims against the Alcohol Beverage Control*
17 *Commissioner:*

18 (TO BE PAID FROM SPECIAL REVENUE FUND)

19 (1) Econo Lodges of America, Inc. \$ 113.76

20	(2) Morgan Sanitation	\$ 210.00
21	(3) Sadie Runyon	\$ 180.40
22	(c) <i>Claim against the Attorney General:</i>	
23	(TO BE PAID FROM GENERAL REVENUE FUND)	
24	(1) County Court Reporters, Inc.	\$ 173.17
25	(d) <i>Claims against the Board of Regents:</i>	
26	(TO BE PAID FROM SPECIAL REVENUE FUND)	
27	from Acct. No. 9280-00	
28	(1) Randy Byers	\$ 1,644.00
29	(2) Lionel Gene Herndon	\$ 3,116.00
30	(3) Helen Kolson	\$ 4,920.00
31	(4) Marion M. McGervey	\$ 87.00
32	(5) Jessie Mae Turney	\$ 4,920.00
33	(6) Marcia K. Vaughan	\$ 6,001.00
34	from Acct. No. 8627-40	
35	(1) Charles R. Dotson	\$ 145.00
36	from Acct. No. 8610-60	
37	(1) Arlie Clay Forman	\$ 320.00
38	(2) Barbara B. Harris	\$ 2,125.00
39	(3) Charles W. Priest	\$ 1,064.00
40	from Acct. No. 8610-31	
41	(1) Delbert Wayne Helmick	\$ 276.00
42	(2) Dwight Pyles	\$ 27.00
43	(3) Peter E. Wu	\$ 165.00
44	from Acct. No. 8610-34	
45	(1) Martha H. McBee	\$ 347.00
46	from Acct. No. 8627-42	
47	(1) The Neff Company	\$ 1,294.81
48	from Acct. No. 8627-43	
49	(1) Ali Reza Teymouri	\$ 425.00

50	(e) <i>Claim against the Civil Service System:</i>		
51		(TO BE PAID FROM GENERAL REVENUE FUND)	
52	(1) Department of		
53	Employment Security	\$	412.32
54	(f) <i>Claim against the Commission on Aging:</i>		
55		(TO BE PAID FROM GENERAL REVENUE FUND)	
56		from Acct. No. 4065-06	
57	(1) Moore Business Forms, Inc.	\$	4,988.00
58	(g) <i>Claims against the Department of Banking:</i>		
59		(TO BE PAID FROM SPECIAL REVENUE FUND)	
60	(1) Federal Deposit		
61	Insurance Corporation	\$	8,042.60
62	(2) David S. Mudie	\$	59.60
63	(h) <i>Claims against the Department of Corrections:</i>		
64		(TO BE PAID FROM GENERAL REVENUE FUND)	
65	(1) Brent Boggs	\$	50.00
66	(2) Davis Memorial Hospital	\$	721.01
67	(3) Charles R. Farris	\$	600.00
68	(4) Brady Smith.....	\$	211.22
69	(5) Wheeling Clinic.....	\$	1,554.50
70	(i) <i>Claims against the Department of Education:</i>		
71		(TO BE PAID FROM GENERAL REVENUE FUND)	
72		from Acct. No. 2860-01	
73	(1) Richard B. Bord, Jr.	\$	155.00
74	(2) Gateway Motel and		
75	Restaurant, Inc.	\$	248.40
76	(3) Shelley Joan Weiss	\$	473.00
77	(j) <i>Claims against the Department of Health:</i>		
78		(TO BE PAID FROM GENERAL REVENUE FUND)	
79	(1) Kenneth Brock.....	\$	100.88
80	(2) C. H. James & Co.....	\$	44.16
81	(3) Emma Jean Canado	\$	298.00
82	(4) Charles L. Yarbrough, M.D., Inc. ..	\$	330.00

83	(5) The Chesapeake and Potomac		
84	Telephone Company of		
85	West Virginia	\$	437.65
86	(6) Diskriter Inc.	\$	787.00
87	(7) Exxon Company, U.S.A.	\$	45.40
88	(8) Firestone Tire and Rubber Co.	\$	105.60
89	(9) H. L. Gamponia, d/b/a		
90	H. L. Gamponia Medical		
91	Practice, Inc.	\$	145.20
92	(10) Hamilton Business Systems.	\$	461.00
93	(11) Health Care Collection		
94	Service, Inc.	\$	329.00
95	(12) Holistic Health Center, Inc.	\$	915.00
96	(13) Humana Hospital		
97	Greenbrier Valley	\$	1,079.78
98	(14) Kathy Lewis	\$	184.80
99	(15) H. Richard Marshall	\$	1,480.00
100	(16) Picker International Inc.	\$	830.10
101	(17) Pleasant Valley Hospital	\$	140.88
102	(18) Richards Medical Company.	\$	83.87
103	(19) Roane County Family		
104	Health Care, Inc.	\$	26.60
105	(20) Schering Corporation	\$	100.00
106	(21) Scott, Craythorne, Lowe,		
107	Mullen & Foster, Inc.	\$	3,287.00
108	(22) Thomas J. Solon	\$	373.30
109	(23) St. Joseph's Hospital	\$	120.00
110	(24) Stonewall Jackson		
111	Memorial Hospital.	\$	715.60
112	(25) Sturgeon's Opticians	\$	272.00
113	(26) Donald M. Thaler	\$	105.50
114	(27) Union Oil Company of California,		
115	d/b/a UNOCAL	\$	93.98
116	(28) West Fork River Public		
117	Service District	\$	4,137.27
118	(k) <i>Claims against the Department of Health — Office</i>		
119	<i>of the Chief Medical Examiner:</i>		
120	(TO BE PAID FROM GENERAL REVENUE FUND)		
121	(1) Vaman S. Diwan	\$	650.00
122	(2) David O. Wright	\$	250.00

123 (l) *Claims against the Department of Highways:*

124

(TO BE PAID FROM STATE ROAD FUND)

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

140 (m) *Claims against the Department of Motor Vehicles:*

141

(TO BE PAID FROM STATE ROAD FUND)

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

145 (n) *Claim against the Department of Natural Resources:*

146

(TO BE PAID FROM SPECIAL REVENUE FUND)

147	(1) Moore Business Forms, Inc.	\$ 1,591.65
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148 (o) *Claims against the Department of Public Safety:*

149

(TO BE PAID FROM GENERAL REVENUE FUND)

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

153 (p) *Claims against the Division of Vocational
154 Rehabilitation:*

155

(TO BE PAID FROM SPECIAL REVENUE FUND)

156

from Acct. No. 7873-01

157	(1) A & I Supply Company	\$ 14.05
158	(2) Alling and Cory	\$ 834.36

159		from Acct. No. 7873-02	
160	(1)	Lowe's of West Virginia,	
161		Inc. d/b/a Lowe's	
162		Government Sales/WV.....	\$ 1,002.57
163		from Acct. No. 7873-05	
164	(1)	St. Joseph's Hospital	\$ 310.00
165		(TO BE PAID FROM GENERAL REVENUE FUND)	
166		from Acct. No. 4405-03	
167	(1)	Vocational Research Institute	\$10,119.90
168	(q)	<i>Claim against the Farm Management Commission:</i>	
169		(TO BE PAID FROM GENERAL REVENUE FUND)	
170	(1)	Bob's Mobile Home Service	\$ 1,386.64
171	(r)	<i>Claim against the Governor's Office of Community</i>	
172		<i>and Industrial Development:</i>	
173		(TO BE PAID FROM GENERAL REVENUE FUND)	
174		from Acct. No. 1210	
175	(1)	The Lawhead Press, Inc.	\$ 351.90
176	(s)	<i>Claim against the Human Rights Commission:</i>	
177		(TO BE PAID FROM GENERAL REVENUE FUND)	
178	(1)	Olympia USA, Inc.....	\$ 6,178.00
179	(t)	<i>Claim against the Insurance Commission:</i>	
180		(TO BE PAID FROM GENERAL REVENUE FUND)	
181	(1)	Zenith Data Systems Corp.	\$ 2,623.45
182	(u)	<i>Claims against the Nonintoxicating Beer Com-</i>	
183		<i>missioner:</i>	
184		(TO BE PAID FROM GENERAL REVENUE FUND)	
185	(1)	Advanced Brands, Ltd.....	\$ 557.38
186	(2)	Eastern Brewing Corporation	\$ 300.00
187	(3)	Gourmet Beer International, Inc. ..	\$ 100.00
188	(4)	Jos. Huber Brewing Co.	\$ 1,031.25
189	(5)	The Lion Inc.	\$ 750.00

190	(v) <i>Claim against the Public Service Commission:</i>		
191		(TO BE PAID FROM SPECIAL REVENUE FUND)	
192	(1) David L. Akers	\$	70.05
193	(w) <i>Claim against the Supreme Court of Appeals:</i>		
194		(TO BE PAID FROM GENERAL REVENUE FUND)	
195	(1) Associated Psychiatric		
196	Services, Inc.	\$	500.00
197	(x) <i>Claims against the Workers' Compensation Fund:</i>		
198		(TO BE PAID FROM WORKERS'S COMPENSATION FUND)	
199	(1) E. E. Bibb, III	\$	125.00
200	(2) Jefferds Corporation	\$	516.96

201 The Legislature finds that the above moral obligations
 202 and the appropriations made in satisfaction thereof shall
 203 be the full compensation for all claimants, and that prior
 204 to the payments to any claimant provided for in this bill,
 205 the court of claims shall receive a release from said
 206 claimant releasing any and all claims for moral
 207 obligations arising from the matters considered by the
 208 Legislature in the finding of the moral obligations and
 209 the making of the appropriations for said claimant. The
 210 court of claims shall deliver all releases obtained from
 211 claimants to the department against which the claim
 212 was allowed.

CHAPTER 27

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

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

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

Be it enacted by the Legislature of West Virginia:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

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

1 The Legislature has duly considered the findings of
2 fact and recommendations for awards reported to it by
3 the court of claims in respect to the following named
4 claimants who were innocent victims of crime within
5 this state and entitled to compensation; and in respect
6 to each of such named claimants the Legislature adopts
7 those findings of fact as its own, hereby declares it to
8 be the moral obligation of the state to pay each such
9 claimant in the amount specified below, and directs the
10 auditor to issue warrants for the payment thereof out
11 of any fund appropriated and available for the purpose.

12 *Claims for crime victims compensation awards:*

13 (TO BE PAID FROM CRIME VICTIMS COMPENSATION FUND)

14	(1) Antill, Patricia A.	\$ 271.50
15	(2) Arritt, Jon M., II	\$ 831.18
16	(3) Arvin, Carole J.	\$ 21,250.00
17	(4) Baker, Roger Alan	\$ 563.00
18	(5) Ball, Timmy D.	\$ 1,783.00
19	(6) Barnett, Phyllis J.	\$ 7,401.18
20	(7) Bennett, Irene Lockhart	\$ 3,059.60
21	(8) Bills, Michael	\$ 1,310.00
22	(9) Bokanovich, Gary E.	\$ 954.45
23	(10) Brumfield, Patricia A.	\$ 46,310.00
24	(11) Brumfield, Patricia A., as guardian of Derrick K. Brumfield	\$ 3,690.00
25	(12) Butcher, Timothy Earl	\$ 1,250.00
26	(13) Currence, Donald L., as guardian of Jared Currence	\$ 13,104.00
27	(14) Shiflett, Thomas J. & Delores A., as guardians of Jesse Armstrong	\$ 17,423.25
28	(15) Shiflett, Thomas J. & Delores A., as guardians of Jennifer Armstrong ..	\$ 18,222.75
29	(16) Cain, John B., Jr.	\$ 14,050.97
30	(17) Calhoun, Beth A.	\$ 50.00
31	(18) Carder, Tammy J.	\$ 60.00

36	(19)	Casto, Brenda J.	\$ 453.20
37	(20)	Casto, William J.	\$ 12,642.04
38	(21)	Casto, William J., as guardian of	
39		Lisa M. Casto	\$ 4,717.99
40	(22)	Cole, Rose	\$ 1,250.00
41	(23)	Cote, Richard F.	\$ 11,238.76
42	(24)	Cunningham, Margie L.	\$ 139.00
43	(25)	Doherty, Lidia Meade	\$ 1,689.50
44	(26)	Farr, Gerald D.	\$ 989.69
45	(27)	Fife, Larry J.	\$ 18,753.70
46	(28)	Flora, James L.	\$ 965.96
47	(29)	Gallagher, Glenn F.	\$ 82.00
48	(30)	Gardner, David W.	\$ 449.85
49	(31)	Goad, Mary	\$ 10,000.00
50	(32)	Gongola, Edward G., Jr.	\$ 1,680.21
51	(33)	Graham, Melvin	\$ 1,250.00
52	(34)	Graham, Wilma, as guardian of	
53		Roy L. Graham, II	\$ 48,750.00
54	(35)	Grimm, Wendy L.	\$ 14,026.85
55	(36)	Gwynn, Gary S.	\$ 9,648.00
56	(37)	Hall, Gail R.	\$ 16,379.90
57	(38)	Halle, Evelyn Virginia	\$ 12,544.18
58	(39)	Halle, Evelyn Virginia, as guardian	
59		of Michael Charles Phillips	\$ 10,000.00
60	(40)	Hamlin, Ruby Mae	\$ 1,243.75
61	(41)	Hardway, Bernice	\$ 20,000.00
62	(42)	Harkins, Ruth A.	\$ 1,260.70
63	(43)	Harless, Freddie E., II	\$ 18,926.43
64	(44)	Harrison, Harvey S.	\$ 2,573.67
65	(45)	Harvey, Dayton R.	\$ 3,637.65
66	(46)	Helton, Angela M.	\$ 1,250.00
67	(47)	Bragg, Glen E.	\$ 7.50
68	(48)	Hibbs, Samuel	\$ 297.84
69	(49)	Hill, Jackie S.	\$ 348.60
70	(50)	Jackson, Nelsie P.	\$ 7.60
71	(51)	Jeffrey, Claude, Jr.	\$ 6,762.10
72	(52)	Jenkins, Martin C.	\$ 4,221.06
73	(53)	Johns, Gregory L.	\$ 1,676.72
74	(54)	Johnson, Duane C.	\$ 350.00
75	(55)	Johnson, Martha	\$ 964.99
76	(56)	Jones, Rose M.	\$ 340.00
77	(57)	Keller, Gary F.	\$ 647.33

78	(58)	King, Mildred	\$ 1,250.00
79	(59)	Kirkpatrick, David B.	\$ 1,406.50
80	(60)	Kowcheck, Hilda Mae	\$ 50,000.00
81	(61)	Lamb, Johnny R.	\$ 18,447.90
82	(62)	Light, Gary L.	\$ 10,000.00
83	(63)	Long, Timothy R.	\$ 921.00
84	(64)	Marchman, Robert E.	\$ 337.00
85	(65)	Marcum, Myrtle	\$ 30,370.00
86	(66)	Marcum, Myrtle, as guardian of	
87		Tiffany Marcum	\$ 8,825.00
88	(67)	Marcum, Myrtle, as guardian of	
89		Shawn Marcum	\$ 5,745.00
90	(68)	Marcum, Myrtle, as guardian of	
91		Elmer Marcum, Jr.	\$ 5,060.00
92	(69)	McKinney, Beverly J.	\$ 1,250.00
93	(70)	McKisic, Donald Larry	\$ 2,139.12
94	(71)	Miller, David A.	\$ 10,036.77
95	(72)	Mitchell, Sue A.	\$ 20,000.00
96	(73)	Mitchell, Terry L.	\$ 4,014.02
97	(74)	Morrision, Nadine P.	\$ 9,149.66
98	(75)	Mugnano, David P.	\$ 280.00
99	(76)	Nelson, Becky L.	\$ 335.00
100	(77)	Nelson, Pamela S.	\$ 1,250.00
101	(78)	Nicholas, Karla L.	\$ 5,138.34
102	(79)	Paluso, Louie	\$ 14,122.83
103	(80)	Ralston, Margaret L.	\$ 906.00
104	(81)	Reese, Jane A.	\$ 20,000.00
105	(82)	Richards, Ronald G.	\$ 3,516.69
106	(83)	Riggs, James A.	\$ 12,842.20
107	(84)	Rinehart, Frederick D.	\$ 137.50
108	(85)	Ring, Matthew R.	\$ 1,337.00
109	(86)	Samms, Erma L.	\$ 1,250.00
110	(87)	Satterfield, Harry W., Jr.	\$ 16.00
111	(88)	Shaw, Joseph M.	\$ 1,310.27
112	(89)	Sisler, Rose E.	\$ 1,641.42
113	(90)	Sizemore, Melvena	\$ 257.75
114	(91)	Skaggs, Gordon E.	\$ 20.00
115	(92)	Slaymaker, Allen F.	\$ 1,417.07
116	(93)	Smith, Robert L.	\$ 3,885.01
117	(94)	Stewart, Ronda	\$ 1,305.00
118	(95)	Stewart, Ronda, as guardian of	
119		Micky Stewart	\$ 2,000.00

120	(96)	Stewart, Ronda, as guardian of	
121		Samantha Stewart	\$ 2,000.00
122	(97)	Swami, Kirtanananda	\$ 20,000.00
123	(98)	Taylor, Thomas Lee	\$ 1,503.14
124	(99)	Thorn, Daniel J.	\$ 339.36
125	(100)	Tierney, Richard Joseph	\$ 512.30
126	(101)	Toler, Juanita Jane, as guardian of	
127		Edmond Dennis Toler	\$ 5,000.00
128	(102)	Toler, Juanita Jane, as guardian of	
129		Kimberly Ann Toler	\$ 5,000.00
130	(103)	Tomaszewski, Terry L.	\$ 135.00
131	(104)	Tucker, Sandra K.	\$ 81.31
132	(105)	Unrue, Kenneth F.	\$ 1,172.05
133	(106)	Veltman, Catherine A.	\$ 5,136.76
134	(107)	Waid, Edgar C.	\$ 180.97
135	(108)	Welch, William D.	\$ 1,250.00
136	(109)	White, Bertie Mae	\$ 10,000.00
137	(110)	White, Bertie Mae, as guardian of	
138		Sue Ann White	\$ 5,000.00
139	(111)	White, Bertie Mae, as guardian of	
140		Susan Rae White	\$ 5,000.00
141	(112)	White, Bertie Mae, as guardian of	
142		Donald Mairs White, Jr.	\$ 5,000.00
143	(113)	Whitehill, William George,	
144		Administrator of the Estate	
145		of George Russell Whitehill	\$ 50,000.00
146	(114)	Wilmer, Dwain E.	\$ 326.48
147	(115)	Wood, Alma Jewell	\$ 750.11
148	(116)	Workman, Michael	\$ 4,888.39
149	(117)	Young, Lee W., Jr.	\$ 2,077.68
150		TOTAL	\$771,025.25

151 The Legislature finds that the above moral obligations
 152 and the appropriations made in satisfaction thereof shall
 153 be the full compensation for all claimants herein:
 154 *Provided*, That any claimant herein who, subsequent to
 155 the payment of an award, receives or recovers benefits
 156 or advantages for the economic loss not prior considered
 157 by the court of claims in the course of and in reduction
 158 of the award of compensation, shall inform the court of
 159 claims and crime victims compensation fund of such
 160 recovery for determination of the amounts thereof and

- 161 requirement for the deposit thereof in the crime victims
162 compensation fund.

CHAPTER 28

(Com. Sub. for S. B. 543—By Senator Tucker)

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CONSUMER CREDIT PROTECTION.

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

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

*Clerk's Note: This section was also amended by S. B. 762, which passed on May 28, 1987, in effect from passage.

14 obligation for goods or services not received by the
15 buyer prior to the mailing of such notice of cancellation.
16 The indebtedness for correspondence course materials
17 received and not returned shall not exceed the reasona-
18 ble store purchase price of such materials. In addition
19 thereto, in regard to a correspondence course contract
20 (in part or wholly by correspondence) the buyer may
21 cancel and terminate such indebtedness without regard
22 to the amount of goods and services received by mailing
23 such notice and by returning all materials received. The
24 seller shall return all moneys due the buyer within
25 twenty days of cancellation.

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

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

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

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

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

CHAPTER 29

(S. B. 92—By Senator Tucker)

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

AN ACT to amend and reenact section one hundred four, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, relating to finance charges for loans other than loans made pursuant to revolving loan accounts; finance charge on assigned contracts; assignments of transactions made in other states; and exceptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

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

1 (1) With respect to a consumer loan, other than a
2 consumer loan made pursuant to a revolving loan
3 account: (a) A bank, as defined in section two, article
4 one, chapter thirty-one-a of this code, may contract for
5 and receive a loan finance charge not exceeding the
6 charge or interest permitted by the provisions of section
7 thirty, article four, chapter thirty-one-a or by the
8 provisions of section five, section five-a, or section five-
9 b, article six, chapter forty-seven of this code; (b) an
10 industrial loan company, as defined in section three,
11 article seven, chapter thirty-one of this code, may
12 contract for and receive a loan finance charge not
13 exceeding the aggregate of the interest and charges
14 permitted by subdivisions (5) and (6), subsection (a),
15 section eleven, article seven, chapter thirty-one of this
16 code or by the provisions of section five, article six,
17 chapter forty-seven of this code; (c) a building and loan
18 association, as defined in section two, article six, chapter
19 thirty-one of this code, may contract for and receive a
20 loan finance charge not exceeding the charge or interest
21 permitted by the provisions of section seventeen, article
22 six, chapter thirty-one of this code, or by the provisions
23 of section five, article six, chapter forty-seven of this
24 code; (d) a credit union, as defined in section one, article
25 ten, chapter thirty-one of this code, may contract for and
26 receive a loan finance charge not exceeding the charge

27 or interest permitted by the provisions of section sixteen,
28 article ten, chapter thirty-one of this code, or by the
29 provisions of section five, article six, chapter forty-seven
30 of this code; and (e) any other lender, other than a
31 supervised lender, may contract for and receive a loan
32 finance charge not exceeding the charge or interest
33 permitted by the provisions of section five, section five-
34 a, or section five-b, article six, chapter forty-seven of this
35 code.

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

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

49 (4) Notwithstanding any provision of this section to
50 the contrary, with respect to a consumer loan involving
51 a motor vehicle or a mobile home or with respect to a
52 consumer loan to finance the sale from one seller of both
53 a mobile home and the real estate upon which such
54 mobile home is or will be located, or with respect to a
55 consumer loan where a security interest in real estate
56 owned by the borrower is given to the lender as
57 collateral for such loan, a lender may from the effective
58 date of this section and until and including the first day
59 of July, one thousand nine hundred eighty-two, contract
60 for and receive a loan finance charge not exceeding
61 eighteen percent per year on the unpaid balance
62 calculated according to the actuarial method: *Provided,*
63 That the quantity of real estate involved in such
64 consumer loan transactions involving a mobile home and
65 real estate where such finance charge is contracted for
66 and received shall not exceed one acre.

- 67 (5) If the loan is precomputed:
- 68 (a) The loan finance charge may be calculated on the
69 assumption that all scheduled payments will be made
70 when due, and
- 71 (b) The effect of prepayment, refinancing or consoli-
72 dation is governed by the provisions on rebate upon
73 prepayment, refinancing or consolidation contained in
74 section one hundred eleven of this article.
- 75 (6) Notwithstanding subsection (1), the lender may
76 contract for and receive a minimum loan finance charge
77 of not more than five dollars when the amount loaned
78 does not exceed seventy-five dollars, or seven dollars and
79 fifty cents when the amount loaned exceeds seventy-five
80 dollars.
- 81 (7) An assignee of a consumer credit sale contract
82 may collect, receive or enforce the sales finance charge
83 provided in said contract, and any such charge so
84 collected, received or enforced by an assignee shall not
85 be deemed usurious or in violation of this chapter or any
86 other provision of this code if such sales finance charge
87 does not exceed the limits permitted to be charged by
88 a seller under the provisions of this chapter.
- 89 (8) Notwithstanding subsection (7), a resident lender
90 who is the assignee of a consumer credit sales contract
91 executed by a resident of another state with a credit
92 grantor in that state, may collect, receive or enforce the
93 sales finance charge provided in said contract under the
94 laws of the state where executed. Such charge shall not
95 be deemed to be usurious or in violation of the provisions
96 of this chapter or any other provisions of this code.

CHAPTER 30

(S. B. 40—By Senators Tonkovich, Mr. President and Tucker)

[Passed February 6, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred sixteen,
article three, chapter forty-six-a of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, relating to change in terms of revolving charge accounts or revolving loan accounts; and when higher charges are permitted.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

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

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

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

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

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

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

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

25 (d) The consumer has previously consented in writing

26 to the kind of change made and notice of the change is
27 given to the consumer in two billing cycles prior to the
28 effective date of the change; or

29 (e) The change applies only to purchases made or
30 obligations incurred after a date specified in a notice of
31 the change given in two billing cycles prior to the
32 effective date of the change.

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

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

CHAPTER 31

(H. B. 2238—By Delegate Murphy)

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

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

Be it enacted by the Legislature of West Virginia:

That section one hundred eight, article six, chapter forty-six-a of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. GENERAL CONSUMER PROTECTION.

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

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

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

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

CHAPTER 32

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

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

AN ACT to amend and reenact sections two hundred four and

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

§60A-2-210. Schedule IV.

§60A-2-204. Schedule I.

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

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

9 (1) Acetylmethadol;

10 (2) Alfentanil;

11 (3) Allylprodine;

12 (4) Alphacetylmethadol;

13 (5) Alphameprodine;

14 (6) Alphamethadol;

15 (7) Alpha-methylthiofentanyl;

16 (8) Alpha-methylfentanyl;

17 (9) Benzethidine;

18 (10) Benzylfentanyl;

19 (11) Betacetylmethadol;

- 20 (12) Beta-hydroxyfentanyl;
- 21 (13) Beta-hydroxy-3-methylfentanyl;
- 22 (14) Betameprodine;
- 23 (15) Betamethadol;
- 24 (16) Betaprodine;
- 25 (17) Clonitazene;
- 26 (18) Dextromoramide;
- 27 (19) Diampromide;
- 28 (20) Diethylthiambutene;
- 29 (21) Difenoxin;
- 30 (22) Dimenoxadol;
- 31 (23) Dimepheptanol;
- 32 (24) Dimethylthiambutene;
- 33 (25) Dioxaphetylbutyrate;
- 34 (26) Dipipanone;
- 35 (27) Ethylmethylthiambutene;
- 36 (28) Etonitazene;
- 37 (29) Etoxeridine;
- 38 (30) Fenethylline;
- 39 (31) Furethidine;
- 40 (32) Hydroxypethidine;
- 41 (33) Ketobemidone;
- 42 (34) Levomoramide;
- 43 (35) Levophenacymorphan;
- 44 (36) Morpheridine;
- 45 (37) Noracymethadol;
- 46 (38) Norlevorphanol;
- 47 (39) Normethadone;

- 48 (40) Norpipanone;
- 49 (41) Para-fluorofentanyl;
- 50 (42) Phenadoxone;
- 51 (43) Phenampromide;
- 52 (44) Phenomorphan;
- 53 (45) Phenoperidine;
- 54 (46) Piritramide;
- 55 (47) Proheptazine;
- 56 (48) Properidine;
- 57 (49) Propiram;
- 58 (50) Racemoramide;
- 59 (51) Thiofentanyl;
- 60 (52) 3-methyl fentanyl;
- 61 (53) Tilidine;
- 62 (54) Trimeperidine.

63 (c) Unless specifically excepted or unless listed in
64 another schedule, any of the following opium deriva-
65 tives, its salts, isomers and salts of isomers whenever the
66 existence of such salts, isomers and salts of isomers is
67 possible within the specific chemical designation:

- 68 (1) Acetorphine;
- 69 (2) Acetyldihydrocodeine;
- 70 (3) Benzylmorphine;
- 71 (4) Codeine methylbromide;
- 72 (5) Codeine-N-Oxide;
- 73 (6) Cyprenorphine;
- 74 (7) Desomorphine;
- 75 (8) Dihydromorphine;
- 76 (9) Drotebanol;
- 77 (10) Etorphine (except HCl Salt);

- 78 (11) Heroin;
- 79 (12) Hydromorphenol;
- 80 (13) Methyldesorphine;
- 81 (14) Methyldihydromorphine;
- 82 (15) Morphine methylbromide;
- 83 (16) Morphine methylsulfonate;
- 84 (17) Morphine-N-Oxide;
- 85 (18) Myrophine;
- 86 (19) Nicocodeine;
- 87 (20) Nicomorphine;
- 88 (21) Normorphine;
- 89 (22) Phoclodine;
- 90 (23) Thebacon.
- 91 (d) Unless specifically excepted or unless listed in
92 another schedule, any material, compound, mixture or
93 preparation, which contains any quantity of the follow-
94 ing hallucinogenic substances, or which contains any of
95 the salts, isomers and salts of isomers of any thereof
96 whenever the existence of such salts, isomers and salts
97 of isomers is possible within the specific chemical
98 designation and for the purposes of this subsection only,
99 "isomer" includes the optical position and geometric
100 isomers:
- 101 (1) 2,5-dimethoxyamphetamine; also known by these
102 trade or other names: 2,5-dimethoxy-a-methylphenethyl-
103 amine; 2,5-DMA;
- 104 (2) 3,4-methylenedioxy amphetamine; 3,4-methylene
105 dioxy methamphetamine;
- 106 (3) 4-bromo-2, 5-dimethoxyamphetamine or 4-bromo-
107 2,5-dimethoxy-a-methylphenethylamine, or 4-bromo-2,5-
108 DMA;
- 109 (4) 5-methyloxy-3, 4-methylenedioxy amphetamine;
- 110 (5) 4-methoxyamphetamine; also known by these

- 111 trade or other names: 4-methoxy-amethylphenethylam-
112 ine; paramethoxyamphetamine; PMA;
- 113 (6) 3,4,5-trimethoxy amphetamine;
- 114 (7) Bufotenine; known also by these trade and other
115 names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-
116 dimethylamino-ethyl)-5 indolol; N-N-dimethylserotonin;
117 5-hydroxy-N-dimethyltryptamine; mappine;
- 118 (8) Diethyltryptamine; known also by these trade and
119 other names: N-N-Diethyltryptamine; "DET";
- 120 (9) Dimethyltryptamine; known also by the name
121 "DMT";
- 122 (10) 4-methyl-2,5-dimethoxy amphetamine; known
123 also by these trade and other names: 4-methyl-2,5-
124 dimethoxy-a-methylphenethylamine; "DOM"; "STP";
- 125 (11) Ibogaine; known also by these trade and other
126 names: 7-Ethyl-6, 6a, 7, 8, 9, 10, 12, 13-octahydro-2-
127 methoxy-6,9-methano-5H-pyrido (1', 2': 1, 2 azepino
128 4,5b) indole; tabernanthe iboga;
- 129 (12) Lysergic acid diethylamide;
- 130 (13) Marihuana;
- 131 (14) Mescaline;
- 132 (15) Peyote; meaning all parts of the plant presently
133 classified botanically as *Lophophora Williamsii* Lema-
134 tre, whether growing or not; the seeds thereof; any
135 extract from any part of such plant; and every com-
136 pound, manufacture, salt, derivative, mixture or
137 preparation of such plant, its seeds or extracts;
- 138 (16) N-ethyl-3-piperidyl benzilate;
- 139 (17) N-methyl-3-piperidyl benzilate;
- 140 (18) Psilocybin;
- 141 (19) Psilocyn;
- 142 (20) Tetrahydrocannabinols; including synthetic
143 equivalents of the substances contained in the plant or
144 in the resinous extractives of *Cannabis* or synthetic
145 substances, derivatives and their isomers with similar

146 chemical structure and pharmacological activity such as
147 the following:

148 Delta 1

149 Cis or trans tetrahydrocannabinol, and their optical
150 isomers;

151 Delta 6

152 Cis or trans tetrahydrocannabinol, and their optical
153 isomers;

154 Delta 3, 4

155 Cis or trans tetrahydrocannabinil tetrahydrocanna-
156 binol, and their optical isomers;

157 (21) Thiophene analog of phencyclidine; also known
158 by these trade or other names: (A) (1-(2-thienyl) cycl-
159 ohexyl) piperidine; (B) Thienyl analog of phencyclidine;
160 TPCP;

161 (22) Ethylamine analog of phencyclidine... Some
162 trade or other names: N-ethyl-1-phenylcyclohexylamine,
163 (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclo-
164 hexyl) ethylamine, cyclohexamine, PCE;

165 (23) Pyrrolidine analog of phencyclidine... Some
166 trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine,
167 PCPy, PHP;

168 (24) N-ethylamphetamine;

169 (25) Parahexyl.

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

175 (1) Mecloqualone;

176 (2) Methaqualone.

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

179 (1) Acetyl-alpha-methylfentanyl;

- 180 (2) Alpha-methylthiofentanyl;
- 181 (3) Benzylfentanyl;
- 182 (4) Beta-hydroxyfentanyl;
- 183 (5) Beta-hydroxy-3-methylfentanyl;
- 184 (6) 3-Methylthiofentanyl;
- 185 (7) Thenylfentanyl;
- 186 (8) Thiofentanyl;
- 187 (9) 1-Methyl-4-phenyl-4-propionoxypiperidine
- 188 (MPPP), its optical isomers, salts and salts of isomers;
- 189 (10) 1-(2-Phenylethyl)-4-phenyl-4-acetyloxypiperdine
- 190 (PEPAP), its optical isomers, salts and salts of isomers;
- 191 (11) 3-Methylfentanyl (N-(3-methyl-1-(2-phenyle-
- 192 thyl) -4-piperidyl)-N-phenylpropanamide), its optical
- 193 and geometric isomers, salts and salts of isomers.

§60A-2-210. Schedule IV.

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

3 (b) Unless specifically excepted or unless listed in
4 another schedule, any material, compound, mixture or
5 preparation which contains any quantity of the follow-
6 ing substances, including its salts, isomers and salts of
7 isomers whenever the existence of such salts, isomers
8 and salts of isomers is possible within the specific
9 chemical designation:

- 10 (1) Alprazolam;
- 11 (2) Barbital;
- 12 (3) Bromazepam;
- 13 (4) Camazepam;
- 14 (5) Chloral betaine;
- 15 (6) Chloral hydrate;
- 16 (7) Chlordiazepoxide;
- 17 (8) Clobazam;

- 18 (9) Clonazepam;
- 19 (10) Clorazepate;
- 20 (11) Clotiazepam;
- 21 (12) Cloxazolam;
- 22 (13) Delorazepam;
- 23 (14) Diazepam;
- 24 (15) Estazolam;
- 25 (16) Ethchlorvynol;
- 26 (17) Ethinamate;
- 27 (18) Ethylloflazepate;
- 28 (19) Fludiazepam;
- 29 (20) Flunitrazepam;
- 30 (21) Flurazepam;
- 31 (22) Halazepam;
- 32 (23) Haloxazolam;
- 33 (24) Ketazolam;
- 34 (25) Loprazolam;
- 35 (26) Lorazepam;
- 36 (27) Lormetazepam;
- 37 (28) Mebutamate;
- 38 (29) Medazepam;
- 39 (30) Meprobamate;
- 40 (31) Methohexital;
- 41 (32) Methylphenobarbital (mephobarbital);
- 42 (33) Midazolam;
- 43 (34) Nimetazepam;
- 44 (35) Nitrazepam;
- 45 (36) Nordiazepam;

46 (37) Oxazepam;

47 (38) Oxazolam;

48 (39) Paraldehyde;

49 (40) Petrichloral;

50 (41) Phenobarbital;

51 (42) Pinazepam;

52 (43) Prazepam;

53 (44) Quazepam;

54 (45) Temazepam;

55 (46) Tetrazepam;

56 (47) Triazolam.

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

63 (d) Unless specifically excepted or unless listed in
64 another schedule, any material, compound, mixture or
65 preparation which contains any quantity of the follow-
66 ing substances having a stimulant effect on the central
67 nervous system, including its salts, isomers (whether
68 optical, position or geometric) and salts of such isomers
69 whenever the existence of such salts, isomers and salts
70 of isomers is possible within the specific chemical
71 designation:

72 (1) Diethylpropion;

73 (2) Mazindol;

74 (3) Phentermine;

75 (4) Pemoline (including organometallic complexes
76 and chelates thereof);

77 (5) Pipradrol;

78 (6) SPA ((-)-1-dimethylamino-1, 2-diphenylethane).

79 (e) Other substances. Unless specifically excepted or
80 unless listed in another schedule, any material, com-
81 pound, mixture or preparation which contains any
82 quantity of the following substances, including its salts:

83 (1) Dextropropoxyphene (alpha - (#) - 4 -dimethyla-
84 mino-1, 2 -diphenyl -3 -methyl -2 -propionoxybutane).

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

88 (3) Pentazocine.

89 Amyl nitrite, butyl nitrite, isobutyl nitrite and the
90 other organic nitrites are controlled substances and no
91 product containing these compounds as a significant
92 component shall be possessed, bought or sold other than
93 pursuant to a bona fide prescription, or for industrial
94 or manufacturing purposes.

CHAPTER 33

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

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

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-dd, relating to authority of county commissions to establish county wage and benefits review boards; duties and powers; membership.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3dd. Authority to establish county wage and benefits review board; duties and powers; membership.

1 In addition to all other powers and duties now
2 conferred by law upon county commissions, such
3 commissions are hereby authorized to establish em-
4 ployee wage and benefits review boards.

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

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

13 (b) Job descriptions for each type of position, includ-
14 ing assistants, deputies and employees not covered by a
15 civil service system;

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

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

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

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

25 In addition to the above duties of an employee benefits
26 review board, the board shall establish procedures for
27 receiving and reviewing comments and suggestions of
28 county employees and of any citizen of the county
29 regarding job descriptions, salary schedules and person-
30 nel policies developed for county assistants, deputies and
31 employees not covered by a civil service system.

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

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

36 (2) County clerk;

37 (3) County sheriff;

38 (4) County assessor;

39 (5) Clerk of the circuit court in which the county is
40 located; and

41 (6) Prosecuting attorney.

42 (7) Two county employees selected by the county
43 commission, one of whom shall be a member of a county
44 civil service system, in counties which have such
45 systems, and one of whom shall not be covered by civil
46 service. Each employee member shall be selected from
47 a different county office. Neither employee member
48 shall be an elected official.

49 The county commission shall appropriate sufficient
50 funds for the board to accomplish in a reasonable and
51 proper manner the duties specified herein.

CHAPTER 34

(S. B. 137—By Senators Tucker and Boettner)

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

AN ACT to amend and reenact section two, article three, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to counties; county property; providing that county commissions may choose to extend the hours of county facilities to include evening hours or Saturdays.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. COUNTY PROPERTY.

§7-3-2. Courthouse, jail and offices.

1 The county commission of every county, at the expense
2 of the county, shall provide at the county seat thereof
3 a suitable courthouse and jail, together with suitable

4 offices for the judge of the circuit court and judges of
5 courts of limited jurisdiction, clerks of circuit courts,
6 courts of limited jurisdiction and of the county commis-
7 sion, assessor, sheriff, prosecuting attorney, county
8 superintendent of schools, and surveyor, and all other
9 offices as are or may be required by law: *Provided*, That
10 the courthouse, including any annex or other facility
11 housing the courts and offices herein set out, (excepting
12 all facilities that are on a twenty-four-hour basis), shall
13 be open to the public Monday through Friday during the
14 hours prescribed by the county commission by an order
15 duly recorded in the order book of the commission. The
16 county commission in such order may, in its discretion,
17 provide that the courthouse, including any annex or
18 other facility housing the courts and offices herein set
19 out, be open on Saturday and prescribe the hours during
20 which it shall be open. In no case may the county
21 commission provide that the courthouse, including any
22 annex or other facility housing the courts and offices
23 herein set out, be open for business on Sundays or
24 national or state holidays: *Provided, however*, That the
25 county commission of every county having a population
26 in excess of two hundred thousand may provide at the
27 county seat or elsewhere in the county, as the county
28 commission shall determine, a suitable jail or jails:
29 *Provided further*, That the county commission of any
30 county, regardless of population, may, as provided in
31 article twenty-three, chapter eight of the code of West
32 Virginia, contract with the county commissions of one
33 or more other counties within this state for the erection,
34 construction, equipment, leasing and renting of a
35 regional correctional center for either adult or youth
36 offenders, at a location mutually agreeable to the
37 contracting parties and not necessarily at the county
38 seat, which will serve each county entering into the
39 contract. The county commission shall keep the court-
40 house, jail and other offices in constant and adequate
41 repair, and supplied with the necessary heat, light,
42 furniture, record books, and janitor service, and, except
43 as to the office for the judge of the circuit court, with
44 the necessary stationery and postage, and other things
45 as shall be necessary; but all of the public records, books

46 and papers belonging or appertaining to the county
47 surveyor's office shall be delivered to the clerk of the
48 county commission and retained by him in his official
49 possession and under his control and shall constitute a
50 part of the public records, books and papers of his office.
51 All courthouses, jails and offices hereafter erected shall
52 be built of stone and brick, or stone or brick, or other
53 equally fireproof materials, and the offices shall be
54 fireproof or be furnished with fireproof vaults or safes.
55 The jails shall be well secured, and sufficient for the
56 convenient accommodation of those who may be confined
57 therein, and so that the convicts may be in apartments
58 separate from each other, and from the other prisoners;
59 every apartment shall be so constructed that it can be
60 kept comfortable. The county commission may also
61 provide other necessary offices and buildings, and may,
62 by purchase or otherwise, acquire as much land as may
63 be requisite or desirable for county purposes, and may
64 suitably enclose, improve and embellish the lands so
65 acquired.

66 Subject to the conditions hereinabove set forth with
67 respect to the site of the courthouse, jail, and other
68 offices, the commission may, from time to time, as may
69 seem to it proper, provide, at the expense of the county,
70 a new or other building or buildings to be used for the
71 courthouse and jail, or for either, together with suitable
72 offices, as aforesaid, and for that purpose may acquire,
73 by purchase or otherwise, and hold any lands, or lands
74 and buildings, which may be necessary, and may
75 enclose, improve and embellish the same. When any new
76 or other building or buildings shall be ready for
77 occupancy, the county commission shall make an order
78 declaring that, on a day to be therein named, the new
79 or other building or buildings shall become the court-
80 house, or jail, or both the courthouse and jail of the
81 county, and shall cause copies of the order to be posted
82 at the front door of the new as well as of the old
83 courthouse, at least twenty days before the day named
84 in the order; and on and after the day named the new
85 or other building or buildings shall become, respec-
86 tively, the courthouse, or jail, or both the courthouse and
87 jail of the county in all respects and for all purposes.

88 After the change shall have been made the county
89 commission may sell or otherwise dispose of, as may
90 seem to it proper, the building or buildings previously
91 used as a courthouse and jail, or either, and the land on
92 which they are, or either is, situated, and of the interest
93 of the county therein.

CHAPTER 35

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

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

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

Be it enacted by the Legislature of West Virginia:

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

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

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

1

2 The prosecuting attorney of each county may, in
3 accordance with and limited by the provisions of section
4 seven of this article, appoint practicing attorneys to
5 assist him in the discharge of his official duties during
6 his term of office. Any attorney so appointed shall be
7 classified as an assistant prosecuting attorney and shall
8 take the same oath and may perform the same duties
9 as his principal. Each assistant shall serve at the will

10 and pleasure of his principal and may be removed from
11 office by the circuit court of the county in which he is
12 appointed for any cause for which his principal might
13 be removed.

14 If, in any case, the prosecuting attorney and his
15 assistants are unable to act, or if in the opinion of the
16 court it would be improper for him or his assistants to
17 act, the court shall appoint some competent practicing
18 attorney to act in that case. The court shall certify to
19 the county commission the performance of that service
20 when completed and recommend to the county commis-
21 sion a reasonable compensation for the attorney for his
22 service, and the compensation, when allowed by the
23 county commission, shall be paid out of the county
24 treasury. No provision of this section shall be construed
25 to prohibit the employment by any person of a practic-
26 ing attorney to assist in the prosecution of any person
27 or corporation charged with a crime.

28 The compensation to be paid to an assistant prosecut-
29 ing attorney shall include compensation provided by law
30 for any services he renders as attorney for any admini-
31 strative board or officer of his county.

CHAPTER 36

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

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

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

Be it enacted by the Legislature of West Virginia:

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

Article.

15. West Virginia Economic Development Authority.

18B. Mortgage and Industrial Development Investment Pool.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

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

§31-15-9. Equipment loans.

§31-15-11. Borrowing of money.

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

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

1 Any documentary material or data made or received
 2 by the authority for the purpose of furnishing assistance
 3 to a business, to the extent that such material or data
 4 consists of trade secrets or commercial or financial
 5 information regarding the operation of such business,
 6 shall not be considered public records and shall be
 7 exempt from disclosure pursuant to the provisions of
 8 chapter twenty-nine-b of this code. Any discussion or
 9 consideration of such trade secrets or commercial or
 10 financial information may be held by the authority in
 11 executive session closed to the public, notwithstanding
 12 the provisions of article nine-a, chapter six of this code:
 13 *Provided*, That the West Virginia economic development
 14 authority shall make publicly available the following
 15 information regarding executed loans which shall
 16 include: (1) name of debtor, (2) location(s) of the project,
 17 (3) amount of the West Virginia economic development
 18 authority loan, (4) the purpose of the loan, (5) the loan

- 19 conditions of said executed loan, and (6) the fixed assets
20 which serve as security for the loan.

§31-15-9. Equipment loans.

1 The authority may make loans for equipment as part
2 of the industrial development projects, industrial
3 subdivision projects, and projects for electrical power
4 generating facilities, natural gas transmission lines, coal
5 processing plants, other energy projects, export devel-
6 opment, farm development, job development, forest
7 development, industry assistance corporation projects
8 and industrial and trade jobs development corporation
9 projects, and improvements thereto, subject to the same
10 application, loan and bond procedures and provisions as
11 usually apply to loans issued under the provision of this
12 article: *Provided*, That such loans shall be secured by
13 a first lien on the equipment financed by the loan and
14 shall be additionally secured by a deed of trust in real
15 property and any improvements thereto, or by an
16 unconditional letter of credit approved by the authority,
17 or by any direct obligation of or obligation guaranteeing
18 the payment of both principal and interest by the United
19 States of America. The real property in which a security
20 interest is taken may be the real property upon which
21 the equipment is situate or real property at a different
22 location from the location of the equipment. Such
23 additional security shall be upon such terms and in such
24 amount satisfactory to the authority.

§31-15-11. Borrowing of money.

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

12 such terms or conditions of redemption as such resolu-
13 tion or resolutions may provide.

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

1 The governing body of the authority shall consist of
2 the members of the authority acting as a board, which
3 shall exercise all the powers given to the authority in
4 this article. The governor or his designated representa-
5 tive shall be chairman of the board and its chief
6 executive officer. On the second Wednesday of July of
7 each year, the board shall meet to elect a vice chairman
8 and a secretary-treasurer from among its own members.

9 A majority of the members shall constitute a quorum
10 for the purpose of conducting business. Except in the
11 case of a loan application or unless the bylaws require
12 a larger number, action may be taken by majority vote
13 of the members present. Approval or rejection of a loan
14 application shall be made by majority vote of the full
15 membership of the board.

16 The board shall manage the property and business of
17 the authority and prescribe, amend and repeal bylaws
18 and rules and regulations governing the manner in
19 which the business of the authority is conducted.

20 The governor shall provide staff services to the
21 authority for administration of this article, including
22 liaison between the authority and the industrial devel-
23 opment agencies and related organizations and between
24 the authority and other state agencies whose facilities
25 and services may be useful to the authority in its work.
26 The authority may reimburse any state spending unit
27 for any special expense actually incurred in providing
28 any service or the use of any facility to the authority.

29 The authority shall employ an executive director and
30 any other personnel it determines necessary, and may
31 appoint its own counsel and legal staff, and retain such
32 temporary engineering, financial and other consultants
33 or technicians as may be required for any special study
34 or survey consistent with the provisions of this article.

ARTICLE 18B. MORTGAGE AND INDUSTRIAL DEVELOPMENT INVESTMENT POOL.

- §31-18B-2. Establishment of state mortgage and industrial development investment pool; investment of workers' compensation funds and other funds in such pool; schedule of moneys invested; authority of state board of investments to invest funds from the pool in short-term investments; reversion of control of state board of investments.
- §31-18B-4. West Virginia economic development authority to make available state mortgage and industrial development investment pool funds for investment in industrial development; amount of funds available; interest rate specified.
- §31-18B-5. Reversion to state board of investments of money not used for mortgages.

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

1 (a) There is hereby created and established a "state
2 mortgage and industrial development investment pool"
3 into which moneys shall be paid as provided in this
4 section. The state mortgage and industrial development
5 investment pool shall consist of a portion of the moneys
6 and funds entrusted to the state board of investments
7 by the commissioner of workers' compensation and other
8 state agencies and organizations, which funds are
9 invested by the state board of investments in long-term
10 securities according to the provisions of this code:
11 *Provided*, That no moneys or funds from any pension
12 plan shall be invested in the state mortgage and
13 industrial development investment pool.

14 (b) Notwithstanding any of the restrictions of section
15 nine, article six, chapter twelve, the state board of
16 investments shall make available from the workers'
17 compensation funds and other such funds which it
18 invests, moneys for the state mortgage and industrial
19 development investment pool. Such moneys shall be
20 drawn from workers' compensation funds and other

21 funds except pension funds currently invested by the
22 state board of investments and shall be made available
23 for investment on or before the dates established in
24 subsection (c) of this section: *Provided*, That should the
25 workers' compensation fund fall below three hundred
26 million dollars, then no further transfers provided in
27 this section be granted until the fund again reaches four
28 hundred million dollars.

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

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

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

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

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

56 Investments by the housing development fund are to
57 be made pursuant to the provisions of section three of
58 this article, and by the economic development authority
59 pursuant to section four of this article.

60 (d) The state board of investment may, after commit-
61 ting these funds to the state mortgage and industrial
62 development investment pool, at the discretion of the
63 treasurer's office, invest the moneys of such pool in any
64 short-term investments as may be deemed to be prudent
65 and proper until such funds are invested by the housing
66 development fund or the West Virginia economic
67 development authority. The income from such short-
68 term investments shall accrue to and be credited to the
69 accounts from which such funds were drawn in propor-
70 tion to the amount of funds so drawn.

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

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

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

1 (a) The West Virginia economic development author-
2 ity may use for any investments authorized by sections
3 seven and seven-a, article fifteen, chapter thirty-one of
4 this code, up to one half of the funds of the state
5 mortgage and industrial development investment pool:

6 *Provided*, That the economic development authority
7 shall deposit with the treasurer of the state for the credit
8 of the state mortgage and industrial development pool
9 such notes, security interests or bonds issued by the
10 economic development authority evidencing the in-
11 debtedness of the 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 one of the three highest rating grades by an
15 agency which is nationally known in the field of rating
16 corporate securities: *Provided*, That notes, security
17 interests or bonds evidencing indebtedness of two million
18 dollars or less may be secured by a letter of credit
19 guarantee issued by a bank having an unsecured legal
20 lending limit greater than one million dollars.

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

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

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

- 9 state mortgage and industrial development investment
10 pool.

CHAPTER 37

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

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. CREDIT UNIONS.

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

- §31-10-4. Powers.
- §31-10-7. Fiscal year; annual and special meetings; voting; proxies.
- §31-10-8. Election of directors and committees; oaths of office.
- §31-10-9. Election of officers; powers and duties of board of directors; directors and committeemen not to receive compensation.
- §31-10-11. Powers and duties of supervisory committee.
- §31-10-28. Merger.

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

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

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

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

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

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

21 (3) The names and post-office addresses of the incor-
22 porators, and the number of shares subscribed by each;

23 (4) The total number of shares of stock which the
24 credit union shall have authority to issue and the par
25 value of each share, which par value shall not exceed
26 ten dollars.

27 (b) The applicants shall then prepare and adopt
28 bylaws for the general government of the credit union
29 consistent with the provisions of this article and execute
30 the same in duplicate. The bylaws shall specify:

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

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

39 (3) The conditions and qualifications for membership;

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

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

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

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

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

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

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

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

58 (12) The manner in which dividends shall be deter-
59 mined and paid out.

60 (c) The agreement and bylaws, both executed in
61 duplicate, shall be forwarded to the secretary of state.

62 (d) The secretary of state, within thirty days after the
63 receipt of such agreement, shall determine whether it
64 conforms to the provisions of this article, and whether
65 or not the organization of the credit union in question
66 would benefit the organizers of it, and be consistent with
67 the purposes of this article.

68 (e) Thereupon the secretary of state shall notify the
69 applicants of his decision. If it is favorable, he shall issue
70 a charter, attach the charter to the duplicate of the
71 agreement and return the same, together with the
72 duplicate of the bylaws to the applicants: *Provided*, That
73 the secretary of state shall issue no charter to any credit
74 union to do business in this state until such incorpora-
75 tion agreement and bylaws have been approved in
76 writing by the commissioner of banking.

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

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

99 In order to simplify the organization of credit unions,
100 the commissioner of banking shall cause to be prepared
101 an approved form of incorporation agreement and form

102 of bylaws consistent with this article, which may be used
103 by credit union incorporators.

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

1 The use by any person, copartnership, association or
2 corporation, except corporations formed under the
3 provisions of this article, of any name or title which
4 contains the words "credit union," shall be a misdemea-
5 nor, punishable by a fine of not less than ten nor more
6 than one hundred dollars for each day of the illegal use
7 of such name, and such use may be enjoined by any
8 court having equity jurisdiction over the party or
9 parties. However, the commissioner of banking may
10 authorize associations of credit unions or leagues of
11 credit unions within the state whose members are credit
12 unions to use a name or title which contains the words
13 "credit union."

§31-10-4. Powers.

1 A credit union shall have the following powers:
2 (a) To receive the savings of its members either as
3 payment on shares, or as deposits (including the right
4 to conduct Christmas clubs, vacation clubs and other
5 such thrift organizations within the membership);
6 (b) To make loans to members for provident or
7 productive purposes;
8 (c) To make loans to cooperative society or other
9 organization having membership in the credit union;
10 (d) To deposit funds in state and national banks;
11 (e) To invest in any investment legal for savings
12 banks;
13 (f) To borrow money as hereinafter indicated;
14 (g) To permit the owner of a share or deposit to make
15 withdrawals by negotiable or transferable instruments
16 or other orders for the purpose of making transfers to
17 third parties if such share or deposit is one in which the
18 entire beneficial interest is held by one or more
19 individuals or members or by an organization which is
20 operated primarily for religious, philanthropic,

21 charitable, educational or other similar purposes and
22 which is not operated for profit or if such deposit or
23 account consists of public funds deposited by an officer,
24 employee or agent of the United States, any state,
25 county, municipality or political subdivision thereof;

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

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

1 The fiscal year of every such corporation shall end at
2 the close of business on the thirty-first day of December.
3 The annual meeting of the corporation shall be held on
4 such date as may be provided in the bylaws. Special
5 meetings may be held by order of the directors or of the
6 supervisory committee, and shall be held upon request,
7 in writing, of ten percent of the members. Notice of all
8 meetings of the corporation shall be given in the manner
9 prescribed in the bylaws. At all meetings of members,
10 a member shall have but one vote, irrespective of the
11 number of shares held. No shareholder may vote by
12 proxy, but a society, association, copartnership or
13 corporation, having membership in a credit union, may
14 be represented by one person authorized by such society,
15 association, copartnership or corporation to so represent
16 it. At any meeting the members may decide upon any
17 question of interest to the corporation, and overrule the
18 board of directors; and, by a three-fourths vote of those
19 present and represented, may amend the bylaws, if the
20 notice of the meeting shall have specified the question
21 to be considered.

§31-10-8. Election of directors and committees; oaths of office.

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

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

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

1 At their first meeting, and at the first meeting in each
2 fiscal year, the board of directors shall elect from their
3 number a president, vice president, a secretary and a
4 treasurer. The office of secretary and treasurer may, if
5 the bylaws so provide, be held by one person; and other
6 officers may be elected in the discretion of the directors.
7 The board of directors shall have the general manage-

8 ment of the affairs, funds and records of the corporation,
9 and shall meet as often as may be necessary. Unless the
10 bylaws specifically reserve all or any of these duties to
11 the members, it shall be the special duty of the directors:
12 (a) To act upon all applications for membership and the
13 expulsion of members; (b) to fix the amount of the bond
14 which shall be required of each officer having the
15 custody of funds, which bond shall be signed as surety
16 by some indemnity company duly licensed to transact
17 business in West Virginia, the amount thereof to be
18 approved by the commissioner of banking; (c) to
19 determine from time to time the rate of interest which
20 shall be allowed on deposits and charged on loans; (d)
21 to fix the maximum number of shares which may be
22 held by, and the maximum amount which may be loaned
23 to, any one member; (e) to declare dividends; (f) to
24 recommend amendments to the bylaws; (g) to appoint
25 persons to fill vacancies in the board of directors or in
26 the credit committee until the election and qualification
27 of their successors; (h) to have charge of the investment
28 of the funds of the corporation; (i) to perform such other
29 duties as the members from time to time authorize.

30 No member of the board of directors or of the credit
31 or supervisory committee shall receive any compensa-
32 tion for his services as a member of such board or
33 committees.

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

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

1 The supervisory committee shall inspect the securi-
2 ties, cash and accounts of the corporation and supervise
3 the acts of the board of directors, credit committee and
4 officers. At any time the supervisory committee, by a
5 unanimous vote, may suspend the credit committee or
6 any member thereof, or any member or members of the
7 board of directors, or any officer or officers elected by

8 the board, and by a majority vote they may call a
9 meeting of the shareholders to consider any violation of
10 this article or of the bylaws, or any practice of the
11 corporation which, in the opinion of such committee, is
12 unsafe and unauthorized. Within seven days after the
13 suspension of the credit committee, or any member
14 thereof or of any director or officer, the supervisory
15 committee shall cause notice to be given of a special
16 meeting of the members to take action relative to such
17 suspension. The supervisory committee shall fill vacan-
18 cies in their own number until the next meeting of the
19 members.

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

§31-10-28. Merger.

1 Any credit union may, with the approval of the
2 commissioner of banking, merge with another credit
3 union, under the existing charter of the other credit
4 union, pursuant to any plan agreed upon by a majority
5 of each board of directors of each credit union joining
6 in the merger, approved by the affirmative vote of a
7 majority of the members of each merging credit union
8 voting at a meeting duly called for such purpose, and
9 consented to by any governmental agency or other
10 organization insuring the accounts of the merging credit
11 unions. The provisions of section seven of this article
12 notwithstanding, a member of a credit union voting on
13 the question of merger under the provisions of this
14 section may cast such vote in person or by proxy. After
15 such agreement by the directors and approval by the
16 members of each credit union the president and
17 secretary of each credit union shall execute, in dupli-
18 cate, a certificate of merger, which shall set forth all of
19 the following:

20 (a) The time and place of the meeting of the board of
21 directors at which the plan was agreed upon;

- 22 (b) The vote in favor of adoption of the plan;
- 23 (c) A copy of the resolution or other action by which
24 the plan was agreed upon;
- 25 (d) The time and place of the meeting of the members
26 at which the plan agreed upon was approved;
- 27 (e) The vote by which the plan was approved by the
28 members;

29 Such certificates, in duplicate, and a copy of the plan
30 of merger agreed upon shall be forwarded to the
31 commissioner of banking for a review. If approved, a
32 copy of the certificate certified by him shall be returned
33 to the merging credit unions within thirty days.

34 If a credit union seeking merger is insolvent or in
35 danger of insolvency, the commissioner may approve a
36 merger without the consent of the membership if a
37 majority of the board of directors of each credit union
38 approves a request for a merger.

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

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

CHAPTER 38

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

[Passed February 23, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter sixty-one of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to changing the reference of "rape" to "sexual assault" for purposes of defining first degree murder.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

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

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

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

CHAPTER 39

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

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

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

Be it enacted by the Legislature of West Virginia:

That article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended by adding thereto a new section, designated section one-b, to read as follows:

ARTICLE 6. CRIMES AGAINST THE PEACE.

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

1 Any person who, in a public place, shall disturb the
 2 peace of others by violent, profane, indecent or boister-
 3 ous conduct or language or by the making of unreason-
 4 ably loud noise that is intended to cause annoyance or
 5 alarm to another person, and who persists in such
 6 conduct after being requested to desist by a law-
 7 enforcement officer acting in his lawful capacity, shall
 8 be guilty of disorderly conduct, a misdemeanor, and
 9 upon conviction thereof shall be fined not more than one
 10 hundred dollars.

CHAPTER 40

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

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

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

Be it enacted by the Legislature of West Virginia:

That article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended by adding thereto a new section, designated section twenty-one, to read as follows:

ARTICLE 6. CRIMES AGAINST THE PEACE.

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

1 (a) All persons within the boundaries of the state of
2 West Virginia have the right to be free from any
3 violence, or intimidation by threat of violence, commit-
4 ted against their persons or property because of their
5 race, color, religion, ancestry, national origin, political
6 affiliation or sex.

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

19 (c) If any person conspires with another person or
20 persons to willfully injure, oppress, threaten, or intimid-
21 ate or interfere with any citizen because of such other
22 person's race, color, religion, ancestry, national origin,
23 political affiliation or sex in the free exercise or
24 enjoyment of any right or privilege secured to him or
25 her by the Constitution or laws of the state of West
26 Virginia or by the Constitution or laws of the United
27 States, and in willfull furtherance thereof to assemble
28 with one or more persons for the purpose of teaching any
29 technique or means capable of causing property dam-
30 age, bodily injury or death when such person or persons
31 intend to employ such techniques or means to violate
32 this section, each such person shall be guilty of a felony,
33 and, upon conviction, shall be fined not more than five
34 thousand dollars or imprisoned not more than ten years,
35 or both.

36 (d) The fact that a person committed a felony or
37 misdemeanor, or attempted to commit a felony, because
38 of the victim's race, color, religion, ancestry, national
39 origin, political affiliation or sex, shall be considered a
40 circumstance in aggravation of any crime in imposing
41 sentence.

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

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

CHAPTER 41

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

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.

§62-12-7a. Presentence diagnosis and classification; power of court; custody of convicted person; provision for presentence reports; penalty for escape.

1 Notwithstanding any other provision of law, when any
2 person has been found guilty of, or pleads guilty to, a
3 felony, the court may, prior to pronouncing of sentence,
4 direct that such person be delivered into the custody of
5 the commissioner of corrections, for the purpose of
6 diagnosis and classification for a period not to exceed
7 sixty days: *Provided*, That the court shall require that
8 a presentence report be completed by the probation
9 officer assigned to that person and made available to the
10 department of corrections prior to delivery of any person
11 to a statutorily approved diagnosis and classification
12 unit of the department of corrections. While at the
13 diagnosis and classification unit such person shall
14 undergo examination, diagnosis and classification and
15 he shall then be remanded and delivered to the custody
16 of the sheriff of the county wherein he was found guilty
17 or entered such plea. Within ten days following the
18 termination of such examination, diagnosis and classi-
19 fication, the commissioner of corrections shall make or
20 cause to be made a report to the court wherein the
21 person was found guilty, or entered his plea of guilty,
22 containing the results, findings, conclusions and recom-
23 mendations of the commissioner with respect to such
24 person.

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

30 Any person who has been delivered into the custody
31 of the commissioner under the provisions of this section
32 and who escapes from such custody, shall be guilty of
33 a felony, and, upon conviction thereof, shall be confined
34 in the penitentiary for one year. The term of confine-
35 ment under this section shall commence at the expira-
36 tion of any sentence such person would be subject to for
37 the offense for which such person had been found guilty
38 or to which he had entered his plea of guilty, as the case
39 may be.

CHAPTER 42

(Com. Sub. for S. B. 491—By Senators Tonkovich, Mr. President, by request, and Harman)

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

AN ACT to amend and reenact section four, article three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to immunization requirements for school entrance; and providing for provisional enrollment for certain persons having one dose of each vaccine.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

6 All children entering school for the first time in this
7 state shall have been immunized against diphtheria,
8 polio, rubeola, rubella, tetanus and whooping cough.
9 Any person who cannot give satisfactory proof of having
10 been immunized previously or a certificate from a
11 reputable physician showing that an immunization for
12 any or all diphtheria, polio, rubeola, rubella, tetanus and
13 whooping cough is impossible or improper or sufficient
14 reason why any or all immunizations should not be done,
15 shall be immunized for diphtheria, polio, rubeola,
16 rubella, tetanus and whooping cough prior to being
17 admitted in any of the schools in the state. No child or
18 person shall be admitted or received in any of the
19 schools of the state until he or she has been immunized

20 as hereinafter provided or produces a certificate from
21 a reputable physician showing that an immunization for
22 diphtheria, polio, rubeola, rubella, tetanus and whoop-
23 ing cough has been done or is impossible or improper
24 or other sufficient reason why such immunizations have
25 not been done. Any teacher having information concern-
26 ing any person who attempts to enter school for the first
27 time without having been immunized against diphthe-
28 ria, polio, rubeola, rubella, tetanus and whooping cough
29 shall report the names of all such persons to the county
30 health officer. It shall be the duty of the health officer
31 in counties having a full-time health officer to see that
32 such persons are immunized before entering school:
33 *Provided*, That persons enrolling from schools outside of
34 the state may be provisionally enrolled under minimum
35 criteria established by the director of the department of
36 health so that the person's immunization may be
37 completed while missing a minimum amount of school:
38 *Provided, however*, That no person shall be allowed to
39 enter school without at least one dose of each required
40 vaccine.

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

47 Health officers and physicians who shall do this
48 immunization work shall give to all persons and
49 children a certificate free of charge showing that they
50 have been immunized against diphtheria, polio, rubeola,
51 rubella, tetanus and whooping cough, or he or she may
52 give the certificate to any person or child whom he or
53 she knows to have been immunized against diphtheria,
54 polio, rubeola, rubella, tetanus and whooping cough. If
55 any physician shall give any person a false certificate
56 of immunization against diphtheria, polio, rubeola,
57 rubella, tetanus and whooping cough, he or she shall be
58 guilty of a misdemeanor, and, upon conviction, shall be
59 fined not less than twenty-five nor more than one
60 hundred dollars.

61 Any parent or guardian who refuses to permit his or
62 her child to be immunized against diphtheria, polio,
63 rubeola, rubella, tetanus and whooping cough, who
64 cannot give satisfactory proof that the child or person
65 has been immunized against diphtheria, polio, rubeola,
66 rubella, tetanus and whooping cough previously, or a
67 certificate from a reputable physician showing that
68 immunization for any or all is impossible or improper,
69 or sufficient reason why any or all immunizations should
70 not be done, shall be guilty of a misdemeanor, and
71 except as herein otherwise provided, shall, upon
72 conviction, be punished by a fine of not less than ten nor
73 more than fifty dollars for each offense.

CHAPTER 43

(Com. Sub. for H. B. 2212—By Delegate Hatcher)

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-3. Removal and suspension.

1 The board may remove the superintendent from office
2 for official misconduct, insubordination, incompetence,
3 neglect of duty, or immorality. The charges shall be
4 stated in writing, and the superintendent shall be given
5 an opportunity to be heard by the board upon not less
6 than ten days' notice. The superintendent may be

- 7 suspended by the board, with or without pay, pending
8 final disposition of such charges.

CHAPTER 44

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

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

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

4 (1) To control and manage all of the schools and school
5 interests for all school activities and upon all school
6 property, whether owned or leased by the county,
7 including the authority to require that records be kept
8 of all receipts and disbursements of all funds collected
9 or received by any principal, teacher, student or other
10 person in connection therewith, any programs, activities
11 or other endeavors of any nature operated or carried on
12 by or in the name of the school, or any organization or
13 body directly connected with the school, to audit such
14 records and to conserve such funds, which shall be
15 deemed quasi-public moneys, including securing surety
16 bonds by expenditure of board moneys;

17 (2) To establish schools, from preschool through high
18 school, inclusive of vocational schools; and to establish
19 schools and programs, or both, for post high school
20 instruction, subject to approval of the state board of
21 education;

22 (3) To close any school which is unnecessary and to
23 assign the pupils thereof to other schools: *Provided*, That
24 such closing shall be officially acted upon and teachers
25 and service personnel involved notified on or before the
26 first Monday in April, in the same manner as provided
27 in section four of this article, except in an emergency,
28 subject to the approval of the state superintendent, or
29 under subdivision (5) of this section;

30 (4) To consolidate schools;

31 (5) To close any elementary school whose average
32 daily attendance falls below twenty pupils for two
33 months in succession and send the pupils to other schools
34 in the district or to schools in adjoining districts. If the
35 teachers in the school so closed are not transferred or
36 reassigned to other schools, they shall receive one
37 month's salary;

38 (6) (a) To provide at public expense adequate means
39 of transportation, including transportation across county
40 lines, for all children of school age who live more than
41 two miles distance from school by the nearest available
42 road; to provide at public expense and according to such
43 regulations as the board may establish, adequate means
44 of transportation for school children participating in
45 board-approved curricular and extracurricular activi-
46 ties; and to provide in addition thereto, at public
47 expense, by rules and regulations and within the
48 available revenues, transportation for those within two
49 miles distance; to provide in addition thereto, at no cost
50 to the board and according to rules and regulations
51 established by the board, transportation for participants
52 in projects operated, financed, sponsored or approved by
53 the commission on aging: *Provided*, That all costs and
54 expenses incident in any way to transportation for
55 projects connected with the commission on aging shall
56 be borne by such commission, or the local or county

57 chapter thereof: *Provided, however*, That in all cases the
58 school buses owned by the board of education shall be
59 driven or operated only by drivers regularly employed
60 by the board of education: *Provided further*, That the
61 county board may provide, under rules established by
62 the state board, for the certification of professional
63 employees as drivers of board-owned vehicles with a
64 seating capacity of less than ten passengers used for the
65 transportation of pupils for school-sponsored activities
66 other than transporting students between school and
67 home: *And provided further*, That the use of such
68 vehicles shall be limited to one for each school-sponsored
69 activity: *And provided further*, That buses shall be used
70 for extracurricular activities as herein provided only
71 when the insurance provided for by this section shall
72 have been effected;

73 (b) To enter into agreements with one another to
74 provide, on a cooperative basis, adequate means of
75 transportation across county lines for children of school
76 age subject to the conditions and restrictions of subdi-
77 visions (6) and (8) of this section;

78 (7) To lease school buses operated only by drivers
79 regularly employed by the board to public and private
80 nonprofit organizations or private corporations to
81 transport school-age children to and from camps or
82 educational activities in accordance with rules and
83 regulations established by the board. All costs and
84 expenses incurred by or incidental to the transportation
85 of such children shall be borne by the lessee;

86 (8) To provide at public expense for insurance against
87 the negligence of the drivers of school buses, trucks or
88 other vehicles operated by the board; and if the
89 transportation of pupils be contracted, then the contract
90 therefor shall provide that the contractor shall carry
91 insurance against negligence in such an amount as the
92 board shall specify;

93 (9) To provide solely from county funds for all regular
94 full-time employees of the board all or any part of the
95 cost of a group plan or plans of insurance coverage not

96 provided or available under the West Virginia public
97 employees insurance act;

98 (10) To employ teacher aides, to provide in-service
99 training for teacher aides, the training to be in
100 accordance with rules and regulations of the state board
101 and, in the case of service personnel assuming duties as
102 teacher aides in exceptional childrens programs, to
103 provide a four-clock-hour program of training prior to
104 such assignment which shall, in accordance with rules
105 and regulations of the state board, consist of training in
106 areas specifically related to the education of exceptional
107 children;

108 (11) To establish and conduct a self-supporting
109 dormitory for the accommodation of the pupils attend-
110 ing a high school or participating in a post high school
111 program and of persons employed to teach therein;

112 (12) To employ legal counsel;

113 (13) To provide appropriate uniforms for school
114 service personnel;

115 (14) To provide at public expense and under regula-
116 tions as established by any county board of education for
117 the payment of traveling expenses incurred by any
118 person invited to appear to be interviewed concerning
119 possible employment by such county board of education;

120 (15) To allow or disallow their designated employees
121 to use publicly provided carriage to travel from their
122 residences to their workplace and return: *Provided,*
123 That such usage is subject to the supervision of such
124 board and is directly connected with and required by
125 the nature and in the performance of such employee's
126 duties and responsibilities; and

127 (16) To provide, at public expense, adequate public
128 liability insurance, including professional liability
129 insurance for board employees.

130 "Quasi-public funds" as used herein means any money
131 received by any principal, teacher, student or other
132 person for the benefit of the school system as a result
133 of curricular or noncurricular activities.

134 The board of each county shall expend under such
135 regulations as it establishes for each child an amount not
136 to exceed the proportion of all school funds of the district
137 that each child would be entitled to receive if all the
138 funds were distributed equally among all the children
139 of school age in the district upon a per capita basis.

CHAPTER 45

(Com. Sub. for H. B. 2781—By Delegates Spencer and Caperton)

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

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

- 1 Compulsory school attendance shall begin with the
- 2 seventh birthday and continue to the sixteenth birthday.

3 Exemption from the foregoing requirements of
4 compulsory public school attendance shall be made on
5 behalf of any child for the following causes or conditions,
6 each such cause or condition being subject to confirma-
7 tion by the attendance authority of the county:

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

19 *Exemption B. Instruction in home or other approved*
20 *place.*

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

41 (b) Notwithstanding the provisions of subsection (a) of
42 this Exemption B, the person or persons providing home

43 instruction meet the requirements for Exemption B
44 when the conditions of this subsection are met: *Provided*,
45 That the county superintendent shall have the right to
46 seek from the circuit court of the county an order
47 denying the home instruction, which order may be
48 granted upon a showing of clear and convincing
49 evidence that the child will suffer educational neglect
50 or that there are other compelling reasons to deny home
51 instruction.

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

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

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

70 (4) The child receiving home instruction annually
71 takes a standardized test, to be administered at a public
72 school in the county where the child resides, or admin-
73 istered by a licensed psychologist or other person
74 authorized by the publisher of the test, or administered
75 by a person authorized by the county superintendent or
76 county board of education. In no event may the child's
77 parent or legal guardian administer the test. Where a
78 test is administered outside of a public school, the child's
79 parent or legal guardian shall pay the cost of adminis-
80 tering the test. The public school or other qualified
81 person shall administer to children of compulsory school
82 age the Comprehensive Test of Basic Skills, the Califor-

83 nia achievement test or the Stanford achievement test,
84 which test will be selected by the public school, or other
85 person administering the test, in the subjects of English,
86 grammar, reading, social studies, science and mathe-
87 matics; and shall be administered under standardized
88 conditions as set forth by the published instructions of
89 the selected test. Each child's testing results shall be
90 made available to the person or persons providing home
91 instruction, the child's parent or legal guardian and the
92 county superintendent. Upon request of a duly autho-
93 rized representative of the West Virginia department of
94 education, each child's test results shall be furnished by
95 the person or persons providing home instruction, or by
96 the child's parent or legal guardian, to the state
97 superintendent of schools.

98 If the child's composite test results for any single year
99 for English, grammar, reading, social studies, science
100 and mathematics fall below the fortieth percentile on
101 the selected tests, the person or persons providing home
102 instruction shall initiate a remedial program to foster
103 achievement above that level. If, after one calendar year,
104 the child's composite test results are not above the
105 fortieth percentile level, home instruction shall no
106 longer satisfy the compulsory school attendance require-
107 ment exemption.

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

118 *Exemption C. Physical or mental incapacity.* —
119 Physical or mental incapacity shall consist of incapacity
120 for school attendance and the performance of school
121 work. In all cases of prolonged absence from school due
122 to incapacity of the child to attend, the written state-
123 ment of a licensed physician or authorized school nurse

124 shall be required under the provisions of this article:
125 *Provided*, That in all cases incapacity shall be narrowly
126 defined and in no case shall the provisions of this article
127 allow for the exclusion of the mentally, physically,
128 emotionally or behaviorally handicapped child otherwise
129 entitled to a free appropriate education;

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

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

149 *Exemption F. High school graduation.* — Such exemp-
150 tion shall consist of regular graduation from a standard
151 senior high school;

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

158 *Exemption H. Serious illness or death in the immediate*
159 *family of the pupil.* — It is expected that the county
160 attendance director will ascertain the facts in all cases
161 of such absences about which information is inadequate
162 and report same to the county superintendent of schools;

163 *Exemption I. Destitution in the home.* — Exemption
164 based on a condition of extreme destitution in the home
165 may be granted only upon the written recommendation
166 of the county attendance director to the county super-
167 intendent following careful investigation of the case. A
168 copy of the report confirming such condition and school
169 exemption shall be placed with the county director of
170 public assistance. This enactment contemplates every
171 reasonable effort that may properly be taken on the part
172 of both school and public assistance authorities for the
173 relief of home conditions officially recognized as being
174 so destitute as to deprive children of the privilege of
175 school attendance. Exemption for this cause shall not be
176 allowed when such destitution is relieved through public
177 or private means;

178 *Exemption J. Church ordinances; observances of*
179 *regular church ordinances.* — The county board of
180 education may approve exemption for religious instruc-
181 tion upon written request of the person having legal or
182 actual charge of a child or children: *Provided,* That such
183 exemption shall be subject to the rules and regulations
184 prescribed by the county superintendent and approved
185 by the county board of education;

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

194 The completion of the eighth grade shall not exempt
195 any child under sixteen years of age from the compul-
196 sory attendance provision of this article: *Provided,* That
197 there is a public high school or other public school of
198 advanced grades or a school bus providing free trans-
199 portation to any such school, the route of which is within
200 two miles of the child's home by the shortest practicable
201 route or path as hereinbefore specified under Exemp-
202 tion D of this section.

CHAPTER 46

(Com. Sub. for H. B. 2407—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

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

AN ACT to amend and reenact section six, article nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county board of education depositories; providing alternatives to bonding as a means of securing funds of a county board of education for a bank selected as a county board of education depository.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. SCHOOL FINANCES.

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

1 The sheriff of each county shall remit to the board of
2 education all moneys in his possession held on behalf of
3 the county board of education, whether or not deposited
4 in a bank or depository, unless the sheriff has been
5 designated treasurer of the board of education as
6 provided in this section. Such transfer of funds shall be
7 made as of the balances on hand on the thirtieth day of
8 June of the year in which the board of education
9 appoints a treasurer other than the sheriff, and shall be
10 completed no later than the first day of August of that
11 year. Such transfer shall be adjudged complete and final
12 upon the approval of the sheriff's official settlement for
13 the fiscal year ending on the thirtieth day of June of the
14 year in which the board of education appoints a
15 treasurer other than the sheriff, and any minor adjust-
16 ment made necessary by the actually known figures

17 shall also be made at that time. All balances in all
18 county school funds at the end of each month after the
19 thirtieth day of June of the year in which the board of
20 education appoints a treasurer other than the sheriff
21 shall be transferred by the sheriff to the county board
22 of education not later than the tenth day of the following
23 month.

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

43 The board of education may open a bank account, or
44 accounts, as required to adequately and properly
45 transact the business of the district in a depository, or
46 banks, within the county. Such depositories, or banks,
47 shall provide bond to cover the maximum amount to be
48 deposited at any one time. However, the county board
49 of education may, in lieu of such bond, accept as security
50 for money deposited securities of the United States, or
51 of a state, county, district or municipal corporation, or
52 federal agency securities. One hundred ten percent of
53 the face or par value of such securities shall not be less
54 than the sum hereinbefore specified as the amount to be
55 named in the bond in lieu of which such securities are
56 accepted, or the county board of education may accept
57 such securities as partial security to the extent of their

58 face value for the money so deposited and require bond
59 for the remainder of the full amount hereinbefore
60 specified, to be named in the bond, and, in the bond so
61 required, such acceptance of securities as partial
62 security and the extent thereof shall be set forth. The
63 hypothecation of such securities shall be by proper legal
64 transfer as collateral security to protect and indemnify
65 by trust any and all loss in case of any default on the
66 part of the banking institution in its capacity as
67 depository as aforesaid. All such securities shall be
68 delivered to or deposited for the account of the county
69 board of education, and withdrawal or substitution
70 thereof may be permitted from time to time upon
71 approval by the county board of education by order of
72 record, but such collateral security shall be released
73 only by order of record of the county board of education
74 when satisfied that full and faithful accounting and
75 payment of all the moneys has been made under the
76 provisions hereof. In the event actual possession of such
77 hypothecated securities is delivered to the county board
78 of education, it shall make ample provision for the
79 safekeeping thereof, and the interest thereon when paid
80 shall be turned over to the banking institution, so long
81 as it is not in default as aforesaid. The county board of
82 education may permit the deposit under proper receipt
83 of such securities with one or more banking institutions
84 within the state of West Virginia and may contract with
85 any such institution for safekeeping and exchange of any
86 such hypothecated securities, and may prescribe the
87 rules and regulations for handling and protecting the
88 same.

89 On and after the first day of July, one thousand nine
90 hundred seventy-three, all levies and any other school
91 moneys received by the sheriff and paid to the treasurer
92 of the county board of education shall be deposited in
93 these accounts, and all proper payments from such
94 funds shall be made by the designated depository or
95 bank upon order or draft presented for payment and
96 signed by the duly authorized signatories of the board
97 of education: *Provided, however,* That in determining the
98 depository for board of education funds a board member
99 who has a pecuniary interest in a bank within the county

100 shall not participate in the determination of the
101 depository for such funds.

102 If it be deemed that sufficient funds are on hand in
103 any account at any one time which may be more than
104 are normally required for the payment of incurred
105 expenses, such funds in the amount so deemed available
106 may be invested by the treasurer of the county board
107 with the West Virginia municipal bond commission, or
108 in guaranteed certificates of deposit issued by the
109 depository or bank, or other guaranteed investments
110 such as treasury bills, treasury notes or certificates of
111 deposit issued by either the United States government
112 or a banking institution in which federal or state
113 guarantees are applicable. Interest earned in such
114 investments is to be credited to the fund from which the
115 moneys were originally available.

CHAPTER 47

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

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10A. REHABILITATION SERVICES.

§18-10A-1. Definitions.

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

§18-10A-1. Definitions.

1 As used in this article:

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

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

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

8 (4) "Employment handicap" means a physical or
9 mental condition which constitutes, contributes to, or if
10 not corrected will probably result in, an obstruction to
11 occupational performance.

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

14 (6) "Vocational rehabilitation" and "rehabilitation
15 services" means any services, provided directly or
16 through public or private instrumentalities, found by the
17 director to be necessary to compensate a disabled
18 individual for the employment handicap and to enable
19 the individual to engage in a remunerative occupation
20 including, but not limited to, medical and vocational
21 diagnosis, vocational guidance, counseling and place-
22 ment, rehabilitation training, attendant care services,
23 physical restoration, transportation, occupational li-
24 censes, occupational tools and equipment, including
25 motor vehicles, maintenance, and training books and
26 materials.

27 (7) "Rehabilitation training" means all necessary
28 training provided to a disabled individual to compensate
29 for the employment handicap including, but not limited
30 to, manual, preconditioning, prevocational, vocational,
31 and supplementary training and training provided for
32 the purpose of achieving broader or more remunerative
33 skills and capacities.

34 (8) "Physical restoration" means any medical, surgical
35 or therapeutic treatment necessary to correct or
36 substantially reduce a disabled individual's employment
37 handicap within a reasonable length of time including,

38 but not limited to, medical, psychiatric, dental and
39 surgical treatment, nursing services, hospital care not
40 to exceed ninety days, convalescent home care, drugs,
41 medical and surgical supplies, and prosthetic applian-
42 ces, but excluding curative treatment for acute or
43 transitory conditions.

44 (9) "Prosthetic appliance" means any artificial device
45 necessary to support or take the place of a part of the
46 body or to increase the acuity of a sense organ.

47 (10) "Occupational licenses" means any license,
48 permit or other written authority required by any
49 governmental unit to be obtained in order to engage in
50 an occupation.

51 (11) "Maintenance" means money payments not
52 exceeding the estimated cost of subsistence during
53 vocational rehabilitation.

54 (12) "Regulations" means regulations made by the
55 director with the approval of the state board.

56 (13) "Attendant care evaluation unit" means any
57 agency certified by the division of rehabilitation services
58 that employs a qualified evaluator to provide evaluations
59 and attendant referrals such as the centers for inde-
60 pendent living, and the West Virginia rehabilitation
61 center and any other unit approved by the division.

62 (14) "Attendant care services" means services which
63 include, but are not limited to:

64 (a) Routine bodily functions such as bowel and
65 bladder care;

66 (b) Dressing;

67 (c) Ambulation;

68 (d) Meal preparation and consumption;

69 (e) Assistance in moving in and out of bed;

70 (f) Bathing and grooming;

71 (g) Housecleaning and laundry; and

72 (h) Any other similar activity of daily living.

73 (15) "Attendant" means a self-employed individual
74 who is trained to perform attendant care services and
75 who works as an independent contractor.

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

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

9 Except as to the provisions of article two-b of this
10 chapter and such other code references where the
11 context clearly indicates the provision of vocational
12 education to other than disabled individuals, references
13 in this code to the state board of vocational education
14 as the governing board of vocational or other rehabil-
15 itation services or facilities shall mean the state board
16 of rehabilitation. All references in the code to the
17 division of vocational rehabilitation shall mean the
18 division of rehabilitation services, and all references to
19 the director of the division of vocational rehabilitation
20 shall mean the director of the division of rehabilitation
21 services.

CHAPTER 48

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

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

AN ACT to amend and reenact section five, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting two precincts to have the same boundary and voting place when there is only one convenient voting place in the district and the precinct serves more than seven hundred registered voters.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map; municipal map.

1 The precinct shall be the basic territorial election
2 unit. The county commission shall divide each magiste-
3 rial district of the county into election precincts, shall
4 number the precincts, shall determine and establish the
5 boundaries thereof, and shall designate one voting place
6 in each precinct, which place shall be established as
7 nearly as possible at the point most convenient for the
8 voters of the precinct. Each magisterial district shall
9 contain at least one voting precinct and each precinct
10 shall have but one voting place therein.

11 Each precinct within any urban center shall contain
12 not less than three hundred nor more than eight
13 hundred registered voters. Each precinct in a rural or
14 less thickly settled area shall contain not less than two
15 hundred nor more than seven hundred registered voters,
16 unless upon a written finding by the county commission
17 that establishment of or retention of a precinct of less
18 than two hundred voters would prevent undue hardship
19 to the voters, the secretary of state determines that such
20 precinct be exempt from the two hundred voter min-
21 imum limit. If, at any time the number of registered
22 voters exceeds the maximum number specified, the
23 county commission shall rearrange the precincts within
24 the political division so that the new precincts each
25 contain a number of registered voters within the
26 designated limits. If a county commission fails to
27 rearrange the precincts as required, any qualified voter
28 of the county may apply for a writ of mandamus to
29 compel the performance of this duty: *Provided*, That
30 when in the discretion of the county commission, there
31 is only one place convenient to vote within the precinct
32 and when there are more than seven hundred registered

33 voters within the existing precinct, the county commis-
34 sion may designate two or more precincts with the same
35 geographic boundaries and which have voting places
36 located within the same building. The county commis-
37 sion shall designate alphabetically the voters who will
38 be eligible to vote in each precinct so created. Each such
39 precinct shall be operated separately and independently
40 with separate voting booths, ballot boxes, election
41 commissioners and clerks, and whenever possible, in
42 separate rooms. No two of such precincts may use the
43 same counting board.

44 In order to facilitate the conduct of local and special
45 elections and the use of election registration records
46 therein, precinct boundaries shall be established to
47 coincide with the boundaries of any municipality of the
48 county and with the wards or other geographical
49 districts of the municipality except in instances where
50 found by the county commission to be wholly imprac-
51 ticable so to do. Governing bodies of all municipalities
52 shall provide accurate and current maps of their
53 boundaries to the clerk of any county commission of a
54 county in which any portion of the municipality is
55 located.

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

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

CHAPTER 49

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

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

AN ACT to amend article one-a, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new section, designated section five, relating to state ownership of suggestions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. EMPLOYEE SUGGESTION AWARD BOARD.

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

- 1 The state shall become the sole owner of all sugges-
- 2 tions accepted by the employee suggestion award board.
- 3 The acceptance of a suggestion by the board shall
- 4 constitute an agreement by the employee and the state
- 5 that all claims pertaining to the suggestion, immediate
- 6 and future, on the state of West Virginia are waived.

CHAPTER 50

(Com. Sub. for H. B. 2629—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

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

AN ACT to amend and reenact sections two, three, four, five, six, eight and nine, article two-b, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enterprise zone authority; definitions; creation of authority, membership, terms, powers and duties, and employment of staff; enterprise zone tax exemptions; creation of number of enterprise zones and requirements; and maximum number of enterprise zones and period for which designation as such continues, with required minimum.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. ENTERPRISE ZONE AUTHORITY.

§5B-2B-2. Definitions.

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

§5B-2B-4. Duties of the authority.

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

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

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

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

§5B-2B-2. Definitions.

1 As used in this article, unless the context clearly
2 indicates otherwise:

3 (a) "Authority" means the enterprise zone authority of
4 West Virginia.

5 (b) "Enterprise zone" means an area of the state
6 designated by the authority to be eligible for the benefits
7 of this article.

8 (c) "Qualified business" means any person, corpora-
9 tion or other entity who, during the time of designation
10 of an enterprise zone, is engaged in the active conduct
11 of a trade or business in an enterprise zone in West
12 Virginia:

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

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

21 (i) Residents of an enterprise zone; or

22 (ii) Individuals who have been unemployed for at least
23 twelve months immediately prior to obtaining employ-
24 ment with the business; or

25 (iii) Individuals who have received public assistance
26 benefits for at least twelve months immediately prior to
27 obtaining employment with the business.

28 (d) "Qualified property" means:

29 (1) Any tangible personal property located in an
30 enterprise zone used predominantly by the taxpayer in
31 the zone in the active conduct of a trade or business; or

32 (2) Any real property located in such zone which:

33 (i) Was used predominantly by the taxpayer in the
34 active conduct of a trade or business; or

35 (ii) Was the principal residence of the taxpayer on the
36 date of the sale or exchange;

37 (3) Any interest in a corporation, partnership or other
38 entity if, for the most recent taxable year of such entity
39 ending before the date of the sale or exchange, such
40 entity was a qualified business.

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

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

1 There is hereby created the enterprise zone authority
2 which consists of seven members. The following mem-
3 bership of the authority shall be appointed by the
4 governor with the advice and consent of the Senate: One
5 member shall be appointed from a list of three names
6 submitted by the West Virginia labor-management
7 advisory council; one member shall be appointed from
8 a list of three names submitted by the West Virginia
9 municipal league; one member shall be appointed from
10 a list of three names submitted by the West Virginia
11 association of county officials; three members, no more
12 than two of which shall be from the same political party,
13 shall be appointed by the governor to serve at large.

14 In addition to the gubernatorial appointees, the
15 director of the governor's office of community and
16 industrial development or his designee shall serve as a
17 member and chairperson; further, the director of the
18 governor's office of community and industrial develop-
19 ment, shall call the first meeting as soon as practicable.

20 The members appointed by the governor shall serve
21 a term of four years, except that the members first
22 appointed shall serve for the following terms: Three for
23 a term of one year; two for a term of two years; and one
24 for a term of three years. The governor shall have sole
25 discretion in determining the terms for his initial
26 appointees. The members of the authority, except for the
27 chairperson, shall receive reimbursement for actual and
28 reasonable expenses incurred in the performance of
29 their duties.

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

32 (1) To certify that the criteria of this article for
33 determining which areas qualify as enterprise zones
34 have been met;

35 (2) To monitor the implementation of this article and
36 submit reports evaluating the effectiveness of the
37 program and any suggestions for legislation to the
38 governor and Legislature on the second Wednesday of
39 January of each year;

40 (3) To conduct a continuing evaluation program of
41 enterprise zones;

42 (4) To promulgate all necessary rules and regulations
43 in accordance with the provisions of chapter twenty-
44 nine-a of this code to carry out the purposes of this
45 article;

46 (5) To assist units of local government in obtaining
47 federal status as an enterprise zone;

48 (6) To assist any qualified business in obtaining the
49 benefits of any incentive or inducement program
50 provided by law and to certify qualified businesses to
51 be eligible for the benefits of this article;

52 (7) To assist the governing authority of an enterprise
53 zone in obtaining assistance from any other agency of
54 state government including, but not limited to, assist-
55 ance in providing training and technical assistance to
56 qualified businesses within a zone; and

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

§5B-2B-4. Duties of the authority.

1 (a) The authority shall provide information and
2 appropriate assistance to persons desiring to locate and
3 engage in business in an enterprise zone regarding the
4 state licenses, permits, certificates, approvals, registra-
5 tions, charters and any other forms of permission
6 required by law to engage in business in the state.

7 (b) Irrespective of any authority delegated to the
8 authority to implement the provisions of this article, the
9 authority for determining if any requested licenses,
10 permits, certificates, approvals, registrations, charters
11 or any other form of permission required by law shall
12 be issued shall remain with the agency otherwise legally
13 authorized to issue the permission required.

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

1 Notwithstanding any provision of this code to the
2 contrary, the following exemptions apply to enterprise
3 zones:

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

19 (2) The sale of building materials for use in remodel-
20 ing, rehabilitation, or new construction in an enterprise
21 zone and the sale of new and used equipment and
22 machinery shall be exempt from the taxes imposed by

23 articles fifteen and fifteen-a, chapter eleven of this code,
24 when purchased by a qualified business for use in the
25 enterprise zone. To claim exemption from tax the
26 purchaser must give the seller a properly executed
27 exemption certificate claiming exemption from tax
28 under this provision.

29 (3) Motor vehicles purchased from a seller located
30 within West Virginia by qualified businesses in an
31 enterprise zone shall receive a fifty percent reduction of
32 the motor vehicle privilege tax;

33 (4) Qualified businesses shall receive a tax credit in
34 the amount of unemployment compensation taxes paid
35 upon new employees hired after the designation of an
36 enterprise zone and meets the requirements of section
37 2 (c)(2) of this article and in accordance with article five,
38 chapter twenty-one-a of this code, against any corporate
39 net income or personal income tax liability of such
40 qualified business; and

41 (5) For state tax purposes, qualified businesses may
42 carry forward net operating losses generated in an
43 enterprise zone after an area has been designated as an
44 enterprise zone for the period of existence of the
45 enterprise zone in which the qualified business is
46 located.

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

1 (a) In order to carry out the purposes of this article,
2 any administrative body which promulgates administrative
3 regulations pursuant to chapter twenty-nine-a of
4 this code may, by regulation, exempt enterprise zones
5 from the provisions of any regulation, in whole or in
6 part, promulgated by that administrative body.

7 (b) Enterprise zones shall not be made exempt from
8 the provisions of any regulation if such exemption
9 endangers the health and safety of the citizens of the
10 state as determined by the administrative body respon-
11 sible for promulgation and enforcement of such
12 regulation.

13 (c) The authority shall conduct a review of applicable
14 state regulations for each qualified business and shall

15 recommend to the appropriate administrative bodies the
16 exemption of regulations promulgated by such body
17 which would contribute to the implementation of this
18 article.

19 (d) Any exemption of a regulation in enterprise zones
20 shall be adopted by regulation in the manner provided
21 by chapter twenty-nine-a of this code.

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

1 (a) Any area or areas of a city, county, or of the state,
2 may be designated an enterprise zone which:

3 (1) Has a continuous boundary or consists of noncon-
4 tiguous tracts commonly owned by a municipal or
5 county government or a local development authority;

6 (2) Is an area of pervasive poverty, unemployment
7 and economic distress.

8 (b) An area meets the requirements of subdivision (2),
9 subsection (a) of this section, if:

10 (1) The average rate of unemployment in such area
11 for the most recent eighteen-month period for which
12 data are available was at least one and one-half times
13 the average national rate of unemployment for such
14 eighteen-month period;

15 (2) At least seventy percent of the residents living in
16 the proposed enterprise zone have incomes below eighty
17 percent of the median income of the residents of the
18 county or counties requesting designation as certified in
19 a statistical report prepared by the state tax depart-
20 ment; or

21 (3) The population of all census tracts in the area
22 decreased by ten percent or more between the two most
23 recent decennial United States census and the city or
24 county requesting designation establishes to the satisfac-
25 tion of the authority that either:

26 (i) Chronic abandonment or demolition of commercial
27 or residential structures exist in the area; or

- 28 (ii) Substantial tax delinquencies relating to ad
29 valorem real property taxes of commercial or residential
30 structures exist in the area.

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

1 (a) In each of the three calendar years after the
2 calendar year one thousand nine hundred eighty-six, the
3 authority may designate not more than five enterprise
4 zones. In the fourth calendar year after the year one
5 thousand nine hundred eighty-six, the authority may
6 designate not more than three enterprise zones. In
7 deciding which areas should be designated as enterprise
8 zones, the authority shall give preference to:

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

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

14 (3) Areas for which the government seeking designa-
15 tion has made or will make the greatest effort to
16 encourage economic activity and remove impediments to
17 job creation, including, but not limited to, a reduction
18 of tax rates or fees and increase in the level or efficiency
19 of local services and a simplification or streamlining of
20 governmental requirements on employers or employees,
21 taking into account the resources available to such
22 government to make such efforts.

23 (b) Any designation of an area as an enterprise zone
24 shall remain in effect during the period beginning on
25 the date of designation and ending on the thirty-first day
26 of December of the twentieth year following the year of
27 designation.

28 (c) The authority may remove designation of any area
29 as an enterprise zone if such area no longer meets the
30 criteria for designation as set out in this article, and by
31 regulation adopted by the authority pursuant to this
32 article. No designation shall be removed less than ten
33 years from the date of original designation.

CHAPTER 51

(H. B. 2767—By Delegates Humphreys and Garrett)

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

AN ACT to amend and reenact section seven, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to estate taxes; and when notice of death must be given to the tax commissioner.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. ESTATE TAXES.

§11-11-7. Notice of death to tax commissioner.

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

CHAPTER 52

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

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

AN ACT to amend and reenact section fourteen, article one, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appraisal of estates; disposition; authority of appraisers to act throughout the estate; certain annuity and investment contracts to be included on appraisal; and hiring of experts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PERSONAL REPRESENTATIVES.

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

1 The real and personal estate of every deceased person,
2 or in which such deceased person had an interest at the
3 time of his death, shall be appraised as follows: The
4 commission by whose order any person is authorized to
5 act as personal representative, or the fiduciary super-
6 visor thereof, shall, upon the qualification of such
7 personal representative and at the time thereof appoint
8 not less than three nor more than five appraisers, any
9 three of whom may act, in the county in which the will
10 of the deceased is probated or administration is granted
11 upon his estate, and a like number in every other county
12 in which there may be any real or personal estate of the
13 deceased: *Provided*, That at the request of the personal
14 representative, the appraisers appointed in the county
15 in which the will of the deceased is probated or
16 administration is granted upon his estate shall have the
17 authority to act in any county in the state in which there
18 may be any real or personal estate of the deceased and
19 the commission or fiduciary supervisor shall so desig-
20 nate in the order of appointment, and, in such event, it
21 shall be unnecessary to appoint appraisers in every
22 other county in which there may be any real or personal
23 estate of the deceased. Such appraisers, after first
24 taking an oath for the purpose, shall list and appraise
25 at its real and actual value all the real estate and all
26 the tangible property of every description owned by the
27 deceased at the time of his death including, but not
28 limited, to all real estate and tangible property in which
29 the decedent had an interest as joint tenant or otherwise
30 or in which any beneficial interest passes to another
31 person by reason of the death of such decedent whose
32 estate is being so appraised and irrespective of whether

33 such real estate or tangible property is subject to
34 administration and located in each county or the
35 counties, as the case may be, and they shall also list and
36 appraise at its real and actual value all his intangible
37 property of every description, including moneys, credits,
38 investments, annuities, life insurance policies, (irrespec-
39 tive of whether such policies are payable to named
40 beneficiaries or in trust or otherwise), judgments and
41 decrees for moneys, notes, bonds, accounts and all other
42 evidences of debt, whether owing to him by persons or
43 corporations in or out of the state, and the number and
44 value, including both the par value, if any, and the
45 actual value, of any shares of capital stock owned by him
46 in any corporation, and every other item of intangible
47 property of whatsoever nature or kind, including all
48 intangible property in which the decedent had an
49 interest as joint tenant or otherwise or in which any
50 beneficial interest passes to another by reason of the
51 death of such decedent, and irrespective of whether such
52 intangible property is subject to administration and
53 whether located in this state or elsewhere. Any real
54 estate or interest therein so appraised shall be identified
55 with particularity and description, shall identify the
56 source of title in the decedent and the location of such
57 realty for purposes of real property ad valorem taxation.
58 Such appraisers shall designate such intangible prop-
59 erty as good, bad or doubtful as to them may appear to
60 be correct, and by whom owing and when payable, and
61 from what time such of them as are interest-bearing
62 bear interest. Every note, bond or evidence of debt shall
63 have endorsed thereon the word "appraised," under
64 which each acting appraiser shall sign his name. No
65 judgment shall be rendered by any of the courts of the
66 state upon such note, bond or evidence of debt unless and
67 until the same shall be first shown to have been listed
68 by the appraisers. Any note, bond or evidence of debt
69 which bears the endorsement by the appraisers, as
70 above required, shall need no further proof that the
71 same was listed. In addition to all other information
72 required by law, the appraisal shall contain and
73 include a questionnaire designed and formulated by the
74 tax commissioner which is designed for the purpose of

75 examining the personal representative to determine that
76 he has made a thorough and proper search and inves-
77 tigation as to the existence and value of each and every
78 kind and species of property required to be included
79 within, and subject to appraisalment by, the provisions
80 of this or any other section of this code, which said
81 questionnaire shall be completed and answered upon the
82 oath or adjuration of each such appraiser and the
83 personal representative or fiduciary.

84 The several appraisements, lists and questionnaire
85 aforesaid shall be executed in triplicate and shall be
86 signed by the appraisers who made the same, and be
87 approved by the personal representative, and be
88 forthwith returned to the fiduciary supervisor. Such
89 supervisor shall inspect such appraisements, lists and
90 questionnaire, see that the same are in proper form, and
91 that all property, if any, suggested by the questionnaire
92 is included within the appraisalment, and, within ten
93 days after they are received and approved by him,
94 deliver two copies of the same to the clerk of the county
95 commission, who shall record the same, with the
96 certificate of approval of the supervisor, and mail one
97 copy of the same to the tax commissioner of West
98 Virginia. The date of return of an appraisalment shall
99 be entered by the clerk of the county commission in his
100 record of fiduciaries. Every such appraisalment and list
101 shall be prima facie evidence of the value of the property
102 embraced therein, and that the personal estate em-
103 braced therein which is subject to administration came
104 to the hands of the personal representative. Such
105 appraisers shall each receive a fee of not less than one
106 dollar nor more than one hundred dollars per day, to be
107 fixed by such supervisor in accordance with the amount
108 of the estate and the work involved in making the
109 appraisalment, and their actual expenses necessarily
110 incurred in making such appraisalment, and such fees
111 and expenses and the supervisor's approval thereof shall
112 be noted in the fiduciary supervisor's certificate. No
113 person shall be permitted by any means whatsoever to
114 avoid the appraisalment and listing of his estate and of
115 all property, real, tangible and intangible, of whatsoever
116 nature and kind, in which a beneficial interest passes

117 to another by reason of the death of the decedent and
118 irrespective of whether such property is subject to
119 administration as herein provided, nor shall his personal
120 representative be permitted to do so. Any personal
121 representative who fails, refuses or declines to comply
122 with the provisions of this section shall be guilty of a
123 misdemeanor, and, upon conviction thereof, shall be
124 fined not less than twenty-five dollars nor more than five
125 hundred dollars.

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

CHAPTER 53

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

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

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

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST
ESTATES OF DECEDENTS.****§44-2-1. Reference of decedents' estates; proceedings
thereon.**

1 (a) Upon the return of the appraisalment by the
2 personal representative to the county clerk, the estate of
3 his decedent shall, by order of the county commission
4 to be then made, be referred to a fiduciary commissioner
5 for proof and determination of debts and claims,
6 establishment of their priority, determination of the
7 amount of the respective shares of the legatees and
8 distributees, and any other matter necessary and proper
9 for the settlement of the estate: *Provided*, That in
10 counties where there are two or more such commission-
11 ers, the estates of decedents shall be referred to such
12 commissioners in rotation, in order that, so far as
13 possible, there may be an equal division of the work:
14 *Provided, however*, That if the personal representative
15 shall deliver to the clerk an appraisalment of the assets
16 of the estate showing their value to be fifty thousand
17 dollars or less, exclusive of property held by the
18 decedent and another person or other persons as joint
19 tenants with rights of survivorship, the clerk shall
20 record said appraisalment and publish a notice as set
21 forth herein: *Provided further*, That a fiduciary commis-
22 sioner may not charge to the estate a fee greater than
23 two hundred dollars for the settlement of an estate,
24 except upon approval of the county commission because
25 of complicating issues or problems attendant to such
26 settlement and amount of time involved in and about
27 their resolution. The personal representative shall,
28 within two months from the date of recordation of the
29 appraisalment in such case, make report to the clerk of
30 his receipts, disbursements and distribution, and shall
31 make affidavit that all claims against the estate, for
32 expenses of administration, taxes and debts of the
33 decedent, have been paid in full; the clerk shall be
34 entitled to collect and receive a fee of ten dollars for
35 recording such report and affidavit, and for publication
36 of the notice hereinafter provided, said fee to be in lieu
37 of any other fee provided by law for recording a report
38 of settlement of the accounts of a decedent's personal

39 representative. It shall be the duty of the clerk, at least
 40 once a month, to cause to be published once a week for
 41 two successive weeks in a newspaper of general circu-
 42 lation within the county of the administration of the
 43 estate, a notice substantially as follows:

44 NOTICE OF FILING OF ESTATE ACCOUNTS

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

48 _____
 49 _____
 50 _____

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

59 _____
 60 Clerk of the County Commission
 61 of _____ County, W. Va.

62 If no such request or objection be made to the clerk
 63 or to the county commission, the county commission may
 64 confirm the report of the personal representative, and
 65 thereupon the personal representative and his surety
 66 shall be discharged; but if such objection or request be
 67 made, the county commission may confirm the account-
 68 ing or may refer the estate to one of its fiduciary
 69 commissioners: *Provided*, That the personal representa-
 70 tive shall have twenty days after the date of the filing
 71 of a claim or claims against the estate of the decedent
 72 to approve or reject said claim before said estate shall
 73 be referred to a fiduciary commissioner.

74 (b) If upon the return and recordation of the appraise-
 75 ment, it shall appear to the clerk that there is only one

76 beneficiary of the estate and that said beneficiary is
77 competent at law, there shall be no further administra-
78 tion upon the estate, and no reference to a fiduciary
79 commissioner, unless, for due cause, the county commis-
80 sion shall order further administration and a reference
81 to a fiduciary commissioner: *Provided*, That the personal
82 representative shall have twenty days after the date of
83 the filing of a claim or claims against the estate of the
84 decedent to approve or reject said claim before said
85 estate shall be referred to a fiduciary commissioner. The
86 bond of the personal representative and his surety shall
87 be discharged one year after the date of qualification of
88 the personal representative if no claim shall have been
89 filed with the county clerk and no suit shall have been
90 instituted against the personal representative. The clerk
91 shall publish a notice once a week for two successive
92 weeks in a newspaper of general circulation within the
93 county of administration of the estate, substantially as
94 follows:

95 NOTICE OF UNADMINISTERED ESTATE

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

101 Dated this _____ day of _____

102 _____

103 Clerk of the County Commission

104 of _____ County, W. Va.

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

108 If no person demands administration and no creditor
109 appears in response to the notice hereinabove provided,
110 alienation of the decedent's real estate more than six
111 months after the date of the notice to a bona fide
112 purchaser for value without notice of any claim against
113 the estate shall be free of any lien for taxes or debts of

114 the decedent, notwithstanding the provisions of section
115 five, article eight, chapter forty-four of this code.

CHAPTER 54

(H. B. 2760—By Delegates Humphreys and Garrett)

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

AN ACT to amend and reenact section two, article four, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to when fiduciaries are required to make an accounting; and exhibit of accounts to the fiduciary commissioner.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. ACCOUNTING BY FIDUCIARIES.

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

1 A statement of all the money which any personal
2 representative, guardian, curator or committee, has
3 received, become chargeable with or disbursed, within
4 one year from the date of his qualification, or within any
5 succeeding year, together with the vouchers for such
6 disbursements, shall, within two months after the end
7 of every such period be exhibited by him before the
8 fiduciary commissioner to whom the estate or trust has
9 been referred. If any fiduciary fails to make an exhibit,
10 the fiduciary commissioner before whom he should
11 make the exhibit shall proceed against him in the
12 appropriate circuit court, and the court shall impose the
13 same penalties, unless the fiduciary is excused for
14 sufficient reason, as are provided in cases where
15 fiduciaries fail to return appraisements.

CHAPTER 55

(Com. Sub. for H. B. 2736—By Delegates Humphreys and Garrett)

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

AN ACT to amend and reenact section one, article eight, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale, conveyance and management of a decedent's real estate; powers of executor and administrator with will annexed with respect to the sale of their decedent's real estate; and the effect of such amendment upon conveyance previously made.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. REAL ESTATE OF DECEDENTS.

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

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

13 When any will heretofore or hereafter executed gives
14 to the executor named therein the power to sell the
15 testator's real estate, which has not been theretofore
16 specifically devised therein, the executor may sell any
17 such real estate unless otherwise provided in said will.

18 If such will directs the sale of testator's real estate but
 19 names no executor, or names an executor and the
 20 executor dies, resigns or becomes incapable of acting,
 21 and an administrator with the will annexed is ap-
 22 pointed, the administrator with the will annexed may
 23 sell such real estate as aforesaid.

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

CHAPTER 56

(H. B. 3121—By Delegate J. Martin)

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. WEST VIRGINIA FOREST MANAGEMENT REVIEW COMMISSION.

§5-24-1. Short title.

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

§5-24-3. Commission created; composition; appointment of members.

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

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

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

§5-24-7. Reports.

§5-24-8. Commission termination.

§5-24-1. Short Title.

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

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

- 1 The Legislature hereby finds and declares:
- 2 (a) That the future economic base of West Virginia is
- 3 tied to the development of the forestry industry.
- 4 (b) That efforts to enhance and promote the expansion
- 5 of the forestry industry should be coordinated among the
- 6 several state and federal agencies, commissions, boards,
- 7 committees, associations and other entities.
- 8 (c) That the development of the forestry and wood
- 9 products industry will require: (1) The development of
- 10 multiple-use, sustained-yield management plans for non-
- 11 industrial timber tracts; (2) the development of products
- 12 and markets for the grade of materials that currently
- 13 comprise a majority of the state's available resources; (3)
- 14 a stable and predictable tax program for both new and
- 15 existing firms; (4) a centralized protection program that
- 16 will reduce risk from fire and pestilence; and (5)
- 17 financial assistance for the attraction and expansion of
- 18 new and existing secondary manufacturing facilities
- 19 with special emphasis on assistance for smaller firms
- 20 employing less than twenty persons.
- 21 (d) That the present and future welfare of the people
- 22 of the state require, as a public purpose, a continuing
- 23 effort toward the promotion and development of the
- 24 forestry and wood products industry.
- 25 (e) In recognition of these findings and purposes, it is
- 26 in the best interest of this state to create the West
- 27 Virginia forest management review commission as a
- 28 statutory body.

§5-24-3. Commission created; composition; appointment of members .

1 The West Virginia forest management review com-
2 mission is hereby created for the purposes as set forth
3 in this article. This commission shall be comprised of
4 four members from the West Virginia Senate, a co-
5 chairman and three members to be appointed by the
6 Senate President, and four members of the House of
7 Delegates, a co-chairman and three members to be
8 appointed by the Speaker; four members to be represen-
9 tatives from the commercial forest industry in the state,
10 and three members of the public-at-large. The seven
11 nonlegislative members shall be appointed by the
12 governor, with the advice and consent of the Senate.
13 Two members shall be appointed to serve a term of two
14 years; three members shall be appointed to serve a term
15 of four years; two members shall be appointed to serve
16 a term of six years. The successor of each such appointed
17 member shall be appointed for an overlapping term of
18 six years, except that any person appointed to fill a
19 vacancy occurring prior to the expiration of the term for
20 which the predecessor was appointed shall be appointed
21 only to the remainder of such term. Each board member
22 shall serve until the appointment of his successor.

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

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

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

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

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

13 (d) Develop products and markets for the grade of
14 materials that currently comprise a majority of the
15 state's resources.

- 16 (e) Recommend a stable and predictable tax program
17 for both new and existing firms in the state.
- 18 (f) Develop a centralized and enhanced protection
19 program that will reduce risks from fire and pestilence.
- 20 (g) Develop financial assistance for the attraction and
21 expansion of new and existing secondary manufacturing
22 facilities, with special emphasis on assistance for
23 smaller firms employing less than twenty persons.
- 24 (h) Utilize recognized research expertise of approp-
25 riate existing educational, public and industrial institu-
26 tions or agencies of the state. Research shall include
27 economic development efforts in West Virginia, includ-
28 ing silviculture, wood land management, forest manage-
29 ment, the development of new products as well as other
30 products designed to aid forestry development.
- 31 (i) Employ, if needed, and only with prior approval of
32 the West Virginia Legislature's joint committee on
33 government and finance, such staff as may be necessary.
34 In the event an executive director may be necessary,
35 such individual shall be a forestry graduate of a four-
36 year college of forestry and shall, in addition, have
37 administrative and research experience, preferably, but
38 not mandatorily, with at least five year's experience in
39 government.

**§5-24-5. Appalachian hardwood research center; crea-
tion; duties; responsibilities.**

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

9 The appalachian hardwood research center at West
10 Virginia University is directed to establish priorities
11 and coordinate its research functions with the governor

12 and the Legislature. The center shall: (1) Develop and
13 maintain a computerized inventory of all possible
14 scientific information relating to appalachian hardwood
15 tree species, silviculture, management, products and
16 product development; (2) initiate research projects,
17 including applied research, either originally or by
18 request, designed to aid forestry economic development
19 efforts in West Virginia, including the development of
20 new products as well as other projects designed to
21 increase the utility of low grade appalachian hardwoods;
22 and (3) be generally responsible for encouraging the
23 development of research needed by the forest industry
24 of the state.

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

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

§5-24-7. Reports.

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

§5-24-8. Commission termination.

1 The commission shall be terminated on the first day
2 of July, one thousand nine hundred ninety-two, or until
3 review of its functions shall be undertaken pursuant to
4 the provisions of sections nine, ten and eleven, article
5 ten, chapter four of this code.

CHAPTER 57

(S. B. 225—By Senators Ash and Sharpe)

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10F. DISABLED PERSONS AND PUBLIC USE BUILDINGS AND FACILITIES.

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

§18-10F-1. Purpose; definition of “public use building or facility.”

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

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

11 (1) Apartment houses with less than twenty units, row
12 houses, rooming houses or single-family dwellings;

13 (2) Garages, hangers or boathouses;

14 (3) Buildings classified as hazardous occupancies;

15 (4) Warehouses;

16 (5) Buildings specifically built for field service
17 purposes such as, but not limited to, conservation fire
18 towers, fish hatcheries or tree nursery buildings; or

19 (6) Residence halls at colleges or universities which
20 have one or more resident halls so constructed as to
21 allow physically disabled persons reasonable means of
22 access and use of such buildings.

§18-10F-2. Application of article.

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

§18-10F-3. Rules and regulations.

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

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

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

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

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

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

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

32 (c) No rule or regulation promulgated hereunder shall
33 require the construction of elevators in buildings or
34 facilities not constructed in whole or in part by the use
35 of state, county or municipal funds or the funds of any
36 other political subdivision of this state when such
37 buildings or facilities are less than three stories in
38 height.

§18-10F-4. State structural barriers compliance board created; membership; expenses.

1 There is hereby created the state structural barriers
2 compliance board which shall consist of five voting
3 members appointed by the governor, upon the recom-
4 mendation of the state board of vocational education.
5 This structural barriers compliance board shall consist
6 of one member who shall have severely limited mobility,
7 one member who shall be a professional human services
8 worker, one member who shall be a professional
9 architect or engineer, one member who shall have
10 experience in the building industry and one who shall
11 be from the general public. The director of the division
12 of vocational rehabilitation shall serve as an ex officio
13 member of the board. The members shall serve for a
14 term of three years except of those initially appointed,
15 one shall be appointed for a term of one year, two for
16 a term of two years and two for a term of three years.
17 A vacancy shall be filled in the same manner as the
18 original appointment for the balance of the unexpired
19 term. The members of the board shall receive no
20 compensation for their services on such board, but they
21 shall be reimbursed for all reasonable and necessary
22 expenses actually incurred in the performance of their
23 duties as members of the board. The board shall meet
24 at least four times per year, and with such additional
25 meetings as needed. The board shall elect a chairperson
26 from among its members, to serve for one year, who may
27 call special meetings when needed.

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

1 The state structural barriers compliance board shall
2 promulgate reasonable rules and regulations; hear
3 appeals by persons affected by this article with regard
4 to compliance requirements and hear complaints by
5 disabled persons who are to be provided access to public
6 buildings by the article, with such hearings to take place
7 within a reasonable time and as soon as practicable. The
8 board shall keep statistics on the number of plans
9 reviewed and violations found by the state fire marshal,
10 the number of variances allowed by the board and the

11 number and disposition of complaints by disabled
12 persons. A report on the activities of the board,
13 including these statistics, shall be made to the governor
14 annually.

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

1 It is the duty of any owner to comply with the
2 provisions of this article and all rules and regulations.
3 For the purposes of this section "owner" means any
4 individual, corporation, partnership, trustee, association
5 or other entity that owns, leases or has possession and
6 control of the public use building, or who will own, lease
7 or take possession and control of such building or facility
8 upon its completion, and includes the state, any county,
9 municipality or other subdivision or department thereof.
10 A set of final plans shall be certified by a registered
11 architect or registered professional engineer practicing
12 within the confines of their respective registration laws,
13 and such owners shall notify the fire marshal of such
14 certification, or shall submit to the fire marshal or to
15 a fire prevention bureau or a building department,
16 approved by the fire marshal, a set of final plans for
17 review and approval prior to construction, to assure
18 compliance with the provisions of this article and with
19 any and all reasonable rules and regulations promul-
20 gated hereunder.

21 In order to achieve early compliance, the state fire
22 marshal shall review, approve and certify final plans as
23 being in compliance with and based upon the American
24 National Standards Institute's specifications, as re-
25 quired in section three of this article, even before
26 appointment of board members or promulgation of any
27 rules and regulations, and in the absence of any such
28 prior certification on such basis as authorized in this
29 section by a registered architect or registered profes-
30 sional engineer. Whenever the state fire marshal
31 ascertains that a building or facility or the way of travel
32 to and from the same is about to be constructed, with
33 such construction to begin after the effective date of this
34 article creating the new state structural barriers
35 compliance board, which construction is in violation of

36 the provisions of this article or any such reasonable rules
 37 and regulations, he or she shall take measures to correct
 38 the deficiency. To enforce these rules and regulations,
 39 the state fire marshal may petition the circuit court of
 40 the county where the construction is involved for an
 41 order to compel compliance. The person who must
 42 comply with the provisions of this article may petition
 43 the state structural barriers compliance board for a
 44 variance in specific cases where compliance would be an
 45 extraordinary financial burden or would otherwise be
 46 unreasonable.

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

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

CHAPTER 58

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

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

AN ACT to amend and reenact sections two and three, article ten-g, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto four new sections, designated sections four, five, six and seven, all relating to operation of food service facilities in public office buildings by the division of vocational rehabilitation; definitions; effect on present facilities; licenses for operation of facility; vending machine income; appeals from decisions of the division of vocational rehabilitation; establishment of a committee of blind vendors; and responsibilities.

Be it enacted by the Legislature of West Virginia:

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

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

§18-10G-2. Definitions.

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

§18-10G-4. Licenses.

§18-10G-5. Vending machine income.

§18-10G-6. Appeals.

§18-10G-7. Committee of blind vendors.

§18-10G-2. Definitions.

1 For the purpose of this article:

2 (a) "Active participation" means an ongoing process of
3 negotiations between the division of vocational rehabil-
4 itation and the committee of blind vendors to achieve
5 joint planning of policies, procedures and standards
6 affecting the overall operation of the "food services
7 facilities program" prior to their implementation by the
8 division of vocational rehabilitation. It is understood
9 that the division of vocational rehabilitation bears final
10 responsibility for the administration and operation of
11 the "food services facilities program," including the
12 assurance of active participation by the committee of
13 blind vendors.

14 (b) "Blind person" means a person whose central
15 acuity does not exceed 20/200 in the better eye with
16 correcting lenses or whose visual acuity, if better than
17 20/200, but is accompanied by a limit to the field of
18 vision in the better eye to such a degree that its widest
19 diameter subtends an angle of no greater than twenty
20 degrees. In determining whether an individual is blind,
21 there shall be an examination by a physician skilled in

22 diseases of the eye or an optometrist, whichever the
23 individual shall select.

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

27 (d) "Committee of blind vendors" means an officially
28 constituted body functioning in an advisory capacity of
29 the division of vocational rehabilitation's food services
30 facilities program. This committee is composed of
31 licensed blind vendors, elected biennially and estab-
32 lished, constituted and maintained in accordance with
33 applicable federal regulations.

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

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

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

58 (h) "Public office building" means and includes the
59 state capitol, all county courthouses, all city and town
60 halls, all buildings used primarily for governmental

61 offices of the state and of any county, city and town
62 within the state, but does not include buildings used for
63 institutions under the jurisdiction of the West Virginia
64 board of regents, the department of health, the depart-
65 ment of commerce and the department of corrections.

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

76 (j) "Designee" means an individual or an organization
77 of individuals legally constituted, and under the
78 jurisdiction of the division of vocational rehabilitation,
79 doing business in the state of West Virginia, to assist
80 the state agency with the administration and supervi-
81 sion of the food services facilities program.

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

1 (a) If a governmental agency proposes operating in a
2 public office building a food service facility, whether
3 such operation be of a food service facility in existence
4 on the effective date of this article or be one thereafter
5 to be instituted, the governmental agency, before
6 continuing such existing operation beyond the period of
7 six months immediately following the effective date of
8 this article or before instituting such proposed new
9 operation, shall in writing offer to the division of
10 vocational rehabilitation the opportunity to operate such
11 food service facility in such public office building. If
12 there is a food service facility in operation in a public
13 office building that is being operated by a blind person
14 not covered or supervised as part of the federal or state

15 rehabilitation program prior to the effective date of the
16 amendments to this article, the blind operator shall be
17 permitted to operate the food service facility until the
18 operator ceases to operate or control that food service
19 facility, after which time that food service facility shall
20 become a part of the food service facility program
21 administered by the division of vocational rehabilitation.

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

36 (c) If the division of vocational rehabilitation under
37 the authority of subsection (b) of this section institutes
38 and operates such food service facility as is mentioned
39 therein, the governmental agency shall not during the
40 course of such operation, operate a food service facility
41 in such public office building or by contract, lease,
42 license, or otherwise, permit any other person, firm,
43 corporation or agency to do so.

44 (d) If the division of vocational rehabilitation within
45 sixty days from the receipt of the offer mentioned in
46 subsection (a) of this section rejects or fails to accept the
47 offer, or the governmental agency making the offer
48 determines, in good faith and after a full and thorough
49 study of the relevant circumstances, that the division of
50 vocational rehabilitation is unable to operate such
51 proposed food service facility, or that the division of
52 vocational rehabilitation accepted such offer, but, within
53 the period of six months from such acceptance, failed
54 to institute such food service facility, such proposed food
55 service facility may thereupon be provided in such other

56 manner as may be permitted by law, free from the
57 requirements of this article, and the division of voca-
58 tional rehabilitation may not thereafter, without the
59 express permission of the offering agency, institute such
60 proposed food service facility in the public office
61 building designated in such offer. If the governmental
62 agency which made the offer makes the determination
63 of inability of the division of vocational rehabilitation to
64 operate the proposed food service facility, the govern-
65 mental agency shall, within the aforementioned sixty-
66 day period, provide the division of vocational rehabili-
67 tation with a full written statement of the reasons upon
68 which such determination was predicated, and a food
69 service facility may not be operated in such public office
70 building free from the requirements of this article until
71 the written statement mentioned in this subsection is
72 first given.

73 (e) Notwithstanding any other provisions contained in
74 this article, no governmental agency may by reason of
75 the provisions of this article take any action which will
76 result in the violation of the terms of any valid contract,
77 lease or license existing on the effective date hereof, nor
78 may such governmental agency be precluded from
79 extending the period of such an existing contract, lease
80 or license upon the same terms, and with the same
81 contracting parties, as in the contract, lease or license
82 so extended.

§18-10G-4. Licenses.

1 The division of vocational rehabilitation shall issue a
2 license for the operation of a food service facility to any
3 blind person who qualifies for a license in accordance
4 with the criteria which has been established by the
5 division of vocational rehabilitation and the committee
6 of blind vendors. In issuing any license, the division of
7 vocational rehabilitation shall give preference to any
8 blind person who is a resident of the state of West
9 Virginia. Each license issued shall be for an indefinite
10 period but may be terminated by the division of
11 vocational rehabilitation after affording the licensee an
12 appeal in accordance with the applicable rules and
13 procedures, after the division of vocational rehabilita-

14 tion and the committee of blind vendors are both
15 satisfied that the food service facility is not being
16 operated in accordance with their rules and procedures.

§18-10G-5. Vending machine income.

1 (a) If an existing or a new vending machine or a
2 replacement for an existing vending machine is in-
3 stalled after the effective date of the amendments to this
4 article on any public property, vending machine income
5 shall accrue to the licensed blind person operating the
6 food service facility on the same property or, if none, to
7 the division of vocational rehabilitation. The licensed
8 blind person, by contract or otherwise, shall be respon-
9 sible for servicing and maintaining the vending machine
10 or machines from which vending machine income is
11 received.

12 (b) Vending machine income which accrues to the
13 division of vocational rehabilitation pursuant to subsec-
14 tion (a) may be used for the following:

- 15 (1) Maintenance and replacement of equipment;
- 16 (2) Purchase of new equipment;
- 17 (3) Management services;
- 18 (4) Assuring a fair minimum return to vendors; and
- 19 (5) Establishing retirement funds, health insurance
20 contributions, paid sick leave and paid vacation time for
21 blind vendors.

22 (c) If vending machine income which accrues to the
23 division of vocational rehabilitation pursuant to subsec-
24 tion (a) is limited, it may be used to earn federal funds
25 on a matching basis.

§18-10G-6. Appeals.

1 (a) Any blind person aggrieved by a decision of the
2 division of vocational rehabilitation under this article
3 may apply for an administrative review or a full
4 evidentiary hearing to be conducted in accordance with
5 the procedures established and approved by the division
6 of vocational rehabilitation and the committee of blind
7 vendors.

8 (b) The division of vocational rehabilitation or any
9 aggrieved blind vendor may appeal any unfavorable
10 ruling rendered in accordance with this article to the
11 circuit court of Kanawha County or to the circuit court
12 of the county in which the blind vendor resides.

§18-10G-7. Committee of blind vendors.

1 (a) The division of vocational rehabilitation shall
2 provide for the establishment and operation, including
3 the payment of all reasonable expenses, of a committee
4 of blind vendors to be elected biennially by the licensed
5 blind vendors. Members of the committee of blind
6 vendors shall be elected by secret ballot and the division
7 of vocational rehabilitation in cooperation with the
8 members of the committee of blind vendors shall adopt
9 rules and regulations pertaining to the election of
10 members and the filling of vacancies that may occur on
11 the committee of blind vendors that will assure every
12 blind vendor an opportunity to cast a secret ballot.

13 (b) The committee of blind vendors shall actively
14 participate in an advisory capacity in the carrying out
15 of all program management responsibilities assigned to
16 the division of vocational rehabilitation in this article,
17 and the division of vocational rehabilitation shall assure
18 active participation with this committee.

19 These advisory responsibilities include:

20 (1) Major administrative decisions in policy and
21 program development decisions affecting the overall
22 administration of the state's food services facilities
23 program;

24 (2) Receiving and transmitting grievances at the
25 request of blind vendors and serving as an advocate for
26 blind vendors in connection with such grievances;

27 (3) Development and administration of a state system
28 for the transfer and promotion of blind vendors;

29 (4) Development of training and retraining programs
30 for blind vendors; and

31 (5) Sponsorship of meetings and instructional confer-
32 ences for blind vendors within the state.

CHAPTER 59

(Com. Sub. for H. B. 2688—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

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

AN ACT to amend and reenact section nine-a, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public water systems generally; defining the term "public water system"; authorizing legislative rules to prescribe the maximum contaminant levels to which all public water systems shall conform in order to prevent adverse effects on the health of individuals, to establish treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer, and to establish provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level which would adversely affect the health of the consumer; authorizing legislative rules prescribing minimum requirements for: Sampling and testing, system operation, public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and regulations promulgated under this section, record keeping, laboratory certification, and procedures and conditions for granting variances and exemptions to public water systems from state public water systems regulations; authorizing legislative rules establishing requirements covering the production and distribution of bottled drinking water and establishing requirements governing the taste, odor, appearance, and other consumer acceptability parameters of drinking water; empowering authorized representatives of the state board of health to enter any part of a public water system, whether or not the system is in violation of a legal requirement, for the purpose of inspection, sampling or testing; requiring that records or information reasonably required for a complete inspection be furnished;

making a violation of this section a misdemeanor and prescribing the penalties therefor; authorizing the state board of health or the state director of health, or his authorized representative to seek injunctive relief in the circuit court of the county in which all or part of a public water system is situated for threatened or continuing violations; providing civil penalties for a willful violation of this section, or of any of the regulations or orders issued thereunder; and requiring that all regulations authorized under this section be promulgated by legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE DEPARTMENT OF HEALTH.

§16-1-9a. Public water system defined; regulation of maximum contaminant levels in water systems; authorizing inspections; penalties.

1 A public water system is any water supply or system
2 which regularly supplies or offers to supply, piped water
3 to the public for human consumption, if serving at least
4 an average of twenty-five individuals per day for at least
5 sixty days per year, or which has at least fifteen service
6 connections, and shall include: (1) Any collection,
7 treatment, storage, and distribution facilities under the
8 control of the owner or operator of such system and used
9 primarily in connection with such system, and (2) any
10 collection or pretreatment storage facilities not under
11 such control which are used primarily in connection
12 with such system. A public water system shall not
13 include a system which meets all of the following
14 conditions: (1) Which consists only of distribution and
15 storage facilities (and does not have any collection and
16 treatment facilities); (2) which obtains all of its water
17 from, but is not owned or operated by, a public water
18 system which otherwise meets the definition; (3) which
19 does not sell water to any person; and (4) which is not
20 a carrier conveying passengers in interstate commerce.

21 The state board of health shall prescribe by legislative
22 rule the maximum contaminant levels to which all
23 public water systems shall conform in order to prevent
24 adverse effects on the health of individuals, and, if it
25 deems appropriate, treatment techniques that reduce
26 the contaminant or contaminants to a level which will
27 not adversely affect the health of the consumer. Such
28 rule shall contain provisions to protect and prevent
29 contamination of wellheads and well fields used by
30 public water supplies so that contaminants do not reach
31 a level which would adversely affect the health of the
32 consumer.

33 It shall further prescribe by legislative rule minimum
34 requirements for: Sampling and testing; system opera-
35 tion; public notification by a public water system on
36 being granted a variance or exemption or upon failure
37 to comply with specific requirements of this section and
38 regulations promulgated under this section; record
39 keeping; laboratory certification; as well as procedures
40 and conditions for granting variances and exemptions to
41 public water systems from state public water systems
42 regulations.

43 In addition, the state board of health shall establish
44 by legislative rule, as set out in chapter twenty-nine-a
45 of this code, requirements covering the production and
46 distribution of bottled drinking water and may by
47 legislative rule, as set out in chapter twenty-nine-a of
48 this code, establish requirements governing the taste,
49 odor, appearance, and other consumer acceptability
50 parameters of drinking water.

51 Authorized representatives of the state board of health
52 shall have right of entry to any part of a public water
53 system, whether or not the system is in violation of a
54 legal requirement, for the purpose of inspection,
55 sampling or testing, and shall be furnished records or
56 information reasonably required for a complete
57 inspection.

58 Any individual, partnership, association, syndicate,
59 company, firm, trust, corporation, government corpora-

60 tion, institution, department, division, bureau, agency,
61 federal agency, or any entity recognized by law who
62 shall violate any provision of this section, or any of the
63 regulations or orders issued pursuant thereto, shall be
64 guilty of a misdemeanor, and, upon conviction thereof,
65 shall be fined not less than twenty-five dollars nor more
66 than two hundred dollars, and each day's violation shall
67 constitute a separate offense. In addition thereto, the
68 state board of health or the state director of health, or
69 his authorized representative may seek injunctive relief
70 in the circuit court of the county in which all or part
71 of the public water system is situated for threatened or
72 continuing violations. For a willful violation of this
73 section, or of any of the regulations or orders issued
74 thereunder, an individual, partnership, association,
75 syndicate, company, firm, trust, corporation, govern-
76 ment corporation, institution, department, division,
77 bureau, agency, federal agency, or entity recognized by
78 law, upon a finding thereof by the circuit court of the
79 county in which the violation occurs, shall be subject to
80 a civil penalty of not more than five thousand dollars,
81 and each day's violation shall be grounds for a separate
82 penalty.

83 All regulations authorized under this section shall be
84 promulgated by legislative rules in accordance with the
85 provisions of article three, chapter twenty-nine-a of this
86 code.

CHAPTER 60

(Com. Sub. for S. B. 295—By Senators Tonkovich, Mr. President, and Boettner)

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

AN ACT to amend and reenact section five, article five-i,
chapter sixteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to rules and regulations for consent to hospice services.

Be it enacted by the Legislature of West Virginia:

That section five, article five-i, 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 5I. HOSPICE LICENSURE ACT.

§16-5I-5. State board of health to establish rules and regulations.

1 The state board of health, after soliciting the advice
2 and recommendations of the West Virginia continuum
3 of care board, shall promulgate reasonable rules and
4 regulations for the licensure of hospice programs as it
5 finds necessary in order to ensure adequate care,
6 treatment, health, safety, welfare and comfort of hospice
7 patients.

8 Such regulations shall provide that for purposes of
9 hospice services, including medicare reimbursement for
10 such services, where there has been no adjudication of
11 incompetence of a terminally ill patient and where there
12 is no durable power of attorney for such patient but
13 where such patient is unable to execute an election for
14 hospice services due to physical or mental incapacity as
15 documented in such patient's health care records by two
16 physicians licensed to practice medicine and surgery in
17 this state, the following persons shall be deemed the
18 patient's representative, and authorized to consent to
19 hospice services for such patient, and in the order of
20 priority set forth below:

- 21 (1) The patient's spouse;
- 22 (2) An adult child of the patient;
- 23 (3) A parent of the patient;
- 24 (4) An adult sibling of the patient;
- 25 (5) The nearest living relative of the patient:

26 *Provided,* That there is no reason to believe that
27 hospice services are contrary to the terminally ill
28 patient's religious beliefs and no actual notice of
29 opposition by a member of the same or a prior class.

30 These rules and regulations shall also include, but not
31 be limited to:

- 32 (a) The qualifications and supervision of licensed and
33 nonlicensed personnel;
- 34 (b) The provision and coordination of inpatient care
35 and in-home treatment services, including the develop-
36 ment of a written plan of care;
- 37 (c) The management, operation, staffing and equip-
38 ping of the hospice program;
- 39 (d) The clinical and business records kept by the
40 hospice;
- 41 (e) The procedures for the review of utilization and
42 quality of patient care; and
- 43 (f) Such other requirements as the board of health
44 determines to be appropriate.

CHAPTER 61

(Com. Sub. for H. B. 2342—By Delegate Knight)

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

AN ACT to repeal section six, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, four, five and seven, article two-d; to further amend said article two-d by adding thereto a new section, designated section five-a; to amend and reenact sections eleven, nineteen, twenty, twenty-one and twenty-eight, article twenty-nine-b, all of said chapter sixteen, all relating to continuing and reestablishing the health care cost review authority with certain modifications in its functions; definitions; deleting certain references to federal act; changing expenditure minimums for certificate of need review; allowing certain exemptions from certificate of need review; charging of fees for certain requests for certificate of need review; certificate of need fund; transferring health planning functions to the department of health; state health plan; creating health care planning council; eliminating health care cost review

council; regional health advisory councils; temporary moratorium on construction of long-term care beds; rate-setting powers; automatic approval of rate increases under certain circumstances; procedure for obtaining adjustments and revisions of rate schedules; permitting immediate implementation of temporary rate change in certain cases; and termination date.

Be it enacted by the Legislature of West Virginia:

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

Article.

2D. Certificate of Need.

29B. West Virginia Health Care Cost Review Authority.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

§16-2D-4. Exemptions from certificate of need program.

§16-2D-5. Powers and duties of state health planning and development agency.

§16-2D-5a. Health care planning council; state health plan; regional health advisory councils.

§16-2D-7. Procedures for certificate of need review.

§16-2D-2. Definitions.

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

3 (a) "Affected person" means:

4 (1) The applicant;

5 (2) An agency or organization representing
6 consumers;

7 (3) Any individual residing within the geographic
8 area served or to be served by the applicant;

9 (4) Any individual who regularly uses the health care
10 facilities within that geographic area;

11 (5) The health care facilities which provide services
12 similar to the services of the facility under review and
13 which will be significantly affected by the proposed
14 project;

15 (6) The health care facilities which, prior to receipt
16 by the state agency of the proposal being reviewed, have
17 formally indicated an intention to provide similar
18 services in the future;

19 (7) Third party payers who reimburse health care
20 facilities similar to those proposed for services;

21 (8) Any agency which establishes rates for health care
22 facilities similar to those proposed; or

23 (9) Organizations representing health care providers.

24 (b) "Ambulatory health care facility" means a facility
25 which is free-standing and not physically attached to a
26 health care facility and which provides health care to
27 noninstitutionalized and nonhomebound persons on an
28 outpatient basis. This definition does not include the
29 private office practice of any one or more health
30 professionals licensed to practice in this state pursuant
31 to the provisions of chapter thirty of this code: *Provided*,
32 That such exemption from review of private office
33 practice shall not be construed to include such practices
34 where major medical equipment otherwise subject to
35 review under the provisions of this article is acquired,
36 offered or developed.

37 (c) "Ambulatory surgical facility" means a facility
38 which is free-standing and not physically attached to a
39 health care facility and which provides surgical treat-
40 ment to patients not requiring hospitalization. This
41 definition does not include the private office practice of
42 any one or more health professionals licensed to practice
43 surgery in this state pursuant to the provisions of
44 chapter thirty of this code: *Provided*, That such exemp-
45 tion from review of private office practice shall not be
46 construed to include such practices where major
47 medical equipment otherwise subject to review under
48 the provisions of this article is acquired, offered or
49 developed.

50 (d) "Applicant" means: (1) The governing body or the
51 person proposing a new institutional health service who
52 is, or will be, the health care facility licensee wherein
53 the new institutional health service is proposed to be
54 located, and (2) in the case of a proposed new institu-
55 tional health service not to be located in a licensed
56 health care facility, the governing body or the person
57 proposing to provide such new institutional health
58 service. Incorporators or promoters who will not
59 constitute the governing body or persons responsible for
60 the new institutional health service may not be an
61 applicant.

62 (e) "Bed capacity" means the number of beds for
63 which a license is issued to a health care facility, or, if
64 a facility is unlicensed, the number of adult and
65 pediatric beds permanently staffed and maintained for
66 immediate use by inpatients in patient rooms or wards.

67 (f) "Capital expenditure" means an expenditure:

68 (1) Made by or on behalf of a health care facility; and

69 (2) (A) Which (i) under generally accepted accounting
70 principles is not properly chargeable as an expense of
71 operation and maintenance, or (ii) is made to obtain
72 either by lease or comparable arrangement any facility
73 or part thereof or any equipment for a facility or part;
74 and (B) which (i) exceeds the expenditure minimum, or
75 (ii) is a substantial change to the bed capacity of the
76 facility with respect to which the expenditure is made,
77 or (iii) is a substantial change to the services of such
78 facility. For purposes of part (i), subparagraph (B),
79 subdivision (2) of this definition, the cost of any studies,
80 surveys, designs, plans, working drawings, specifica-
81 tions, and other activities, including staff effort and
82 consulting and other services, essential to the acquisi-
83 tion, improvement, expansion, or replacement of any
84 plant or equipment with respect to which an expendi-
85 ture described in subparagraph (B), subdivision (2) of
86 this definition is made shall be included in determining
87 if such expenditure exceeds the expenditure minimum.
88 Donations of equipment or facilities to a health care
89 facility which if acquired directly by such facility would

90 be subject to review shall be considered capital expen-
91 ditures, and a transfer of equipment or facilities for less
92 than fair market value shall be considered a capital
93 expenditure for purposes of such subdivisions if a
94 transfer of the equipment or facilities at fair market
95 value would be subject to review. A series of expendi-
96 tures, each less than the expenditure minimum, which
97 when taken together are in excess of the expenditure
98 minimum, may be determined by the state agency to be
99 a single capital expenditure subject to review. In
100 making its determination, the state agency shall
101 consider: Whether the expenditures are for components
102 of a system which is required to accomplish a single
103 purpose; whether the expenditures are to be made over
104 a two-year period and are directed towards the accomp-
105 lishment of a single goal within the health care facility's
106 long-range plan; or, whether the expenditures are to be
107 made within a two-year period within a single depart-
108 ment such that they will constitute a significant
109 modernization of the department.

110 (g) "Expenditure minimum" means one million
111 dollars for the twelve-month period beginning the first
112 day of October, one thousand nine hundred eighty-seven.
113 For each twelve-month period thereafter, the state
114 agency may, by regulations adopted pursuant to section
115 eight of this article, adjust the expenditure minimum to
116 reflect the impact of inflation.

117 (h) "Health," used as a term, includes physical and
118 mental health.

119 (i) "Health care facility" is defined as including
120 hospitals, skilled nursing facilities, kidney disease
121 treatment centers, including free-standing hemodialysis
122 units, intermediate care facilities, ambulatory health
123 care facilities, ambulatory surgical facilities, home
124 health agencies, rehabilitation facilities and health
125 maintenance organizations; community mental health
126 and mental retardation facilities, whether under public
127 or private ownership, or as a profit or nonprofit
128 organization and whether or not licensed or required to
129 be licensed in whole or in part by the state. For purposes
130 of this definition, "community mental health and mental

131 retardation facility” means a private facility which
132 provides such comprehensive services and continuity of
133 care as emergency, outpatient, partial hospitalization,
134 inpatient and consultation and education for individuals
135 with mental illness, mental retardation or drug or
136 alcohol addiction.

137 (j) “Health care provider” means a person, partner-
138 ship, corporation, facility or institution licensed or
139 certified or authorized by law to provide professional
140 health care service in this state to an individual during
141 that individual’s medical care, treatment or
142 confinement.

143 (k) “Health maintenance organization” means a
144 public or private organization, organized under the laws
145 of this state, which:

146 (1) Is a qualified health maintenance organization
147 under Section 1310(d) of the Public Health Service Act,
148 as amended, Title 42 United States Code Section 300e-
149 9(d); or

150 (2) (A) Provides or otherwise makes available to
151 enrolled participants health care services, including
152 substantially the following basic health care services:
153 Usual physician services, hospitalization, laboratory, X
154 ray, emergency and preventive services and out-of-area
155 coverage; and

156 (B) Is compensated except for copayments for the
157 provision of the basic health care services listed in
158 subparagraph (2)(A), subdivision (m) of this definition
159 to enrolled participants on a predetermined periodic
160 rate basis without regard to the date the health care
161 services are provided and which is fixed without regard
162 to the frequency, extent or kind of health service
163 actually provided; and

164 (C) Provides physicians’ services primarily (i) directly
165 through physicians who are either employees or
166 partners of such organization, or (ii) through arrange-
167 ments with individual physicians or one or more groups
168 of physicians organized on a group practice or individ-
169 ual practice basis.

170 (l) "Health services" means clinically related preven-
171 tive, diagnostic, treatment or rehabilitative services,
172 including alcohol, drug abuse and mental health
173 services.

174 (m) "Home health agency" is an organization primar-
175 ily engaged in providing directly or through contract
176 arrangements, professional nursing services, home
177 health aide services, and other therapeutic and related
178 services including, but not limited to, physical, speech
179 and occupational therapy and nutritional and medical
180 social services to persons in their place of residence on
181 a part-time or intermittent basis.

182 (n) "Hospital" means an institution which is primarily
183 engaged in providing to inpatients, by or under the
184 supervision of physicians, diagnostic and therapeutic
185 services for medical diagnosis, treatment, and care of
186 injured, disabled or sick persons, or rehabilitation
187 services for the rehabilitation of injured, disabled or sick
188 persons. This term also includes psychiatric and
189 tuberculosis hospitals.

190 (o) "Intermediate care facility" means an institution
191 which provides, on a regular basis, health-related care
192 and services to individuals who do not require the
193 degree of care and treatment which a hospital or skilled
194 nursing facility is designed to provide, but who, because
195 of their mental or physical condition require health-
196 related care and services above the level of room and
197 board.

198 (p) "Long-range plan" means a document formally
199 adopted by the legally constituted governing body of an
200 existing health care facility or by a person proposing a
201 new institutional health service. Each long-range plan
202 shall consist of the information required by the state
203 agency in regulations adopted pursuant to section eight
204 of this article.

205 (q) "Major medical equipment" means a single unit of
206 medical equipment or a single system of components
207 with related functions which is used for the provision
208 of medical and other health services and which costs in
209 excess of seven hundred fifty thousand dollars, except

210 that such term does not include medical equipment
211 acquired by or on behalf of a clinical laboratory to
212 provide clinical laboratory services if the clinical
213 laboratory is independent of a physician's office and a
214 hospital and it has been determined under Title XVIII
215 of the Social Security Act to meet the requirements of
216 paragraphs ten and eleven of Section 1861(s) of such act,
217 Title 42 United States Code Sections 1395x (10) and (11).
218 In determining whether medical equipment costs more
219 than seven hundred fifty thousand dollars, the cost of
220 studies, surveys, designs, plans, working drawings,
221 specifications, and other activities essential to the
222 acquisition of such equipment shall be included. If the
223 equipment is acquired for less than fair market value,
224 the term "cost" includes the fair market value.

225 (r) "Medically underserved population" means the
226 population of an urban or rural area designated by the
227 state agency as an area with a shortage of personal
228 health services or a population having a shortage of such
229 services, after taking into account unusual local condi-
230 tions which are a barrier to accessibility or availability
231 of such services. Such designation shall be in regulations
232 adopted by the state agency pursuant to section eight of
233 this article, and the population so designated may
234 include the state's medically underserved population
235 designated by the Federal Secretary of Health and
236 Human Services under Section 330(b)(3) of the Public
237 Health Service Act, as amended, Title 42 United States
238 Code Section 254(b)(3).

239 (s) "New institutional health service" means such
240 service as described in section three of this article.

241 (t) "Offer" when used in connection with health
242 services, means that the health care facility or health
243 maintenance organization holds itself out as capable of
244 providing, or as having the means for the provision of,
245 specified health services.

246 (u) "Person" means an individual, trust, estate,
247 partnership, committee, corporation, association and
248 other organizations such as joint-stock companies and
249 insurance companies, a state or a political subdivision

250 or instrumentality thereof or any legal entity recognized
251 by the state.

252 (v) "Physician" means a doctor of medicine or osteo-
253 pathy legally authorized to practice medicine and
254 surgery by the state.

255 (w) "Proposed new institutional health service" means
256 such service as described in section three of this article.

257 (x) "Psychiatric hospital" means an institution which
258 primarily provides to inpatients, by or under the
259 supervision of a physician, specialized services for the
260 diagnosis, treatment and rehabilitation of mentally ill
261 and emotionally disturbed persons.

262 (y) "Rehabilitation facility" means an inpatient
263 facility which is operated for the primary purpose of
264 assisting in the rehabilitation of disabled persons
265 through an integrated program of medical and other
266 services which are provided under competent profes-
267 sional supervision.

268 (z) "Review agency" means an agency of the state,
269 designated by the governor as the agency for the review
270 of state agency decisions.

271 (aa) "Skilled nursing facility" means an institution or
272 a distinct part of an institution which is primarily
273 engaged in providing to inpatients skilled nursing care
274 and related services for patients who require medical or
275 nursing care, or rehabilitation services for the rehabil-
276 itation of injured, disabled or sick persons.

277 (bb) "State agency" means the health care cost review
278 authority created, established, and continued pursuant
279 to article twenty-nine-b of this chapter.

280 (cc) "State health plan" means the document approved
281 by the governor after preparation by the former
282 statewide health coordinating council, or that document
283 as approved by the governor after amendment by the
284 health care planning council.

285 (dd) "Health care planning council" means the body
286 established by section five-a of this article to participate
287 in the preparation and amendment of the state health
288 plan and to advise the state agency.

289 (ee) "Substantial change to the bed capacity" of a
290 health care facility means a change, with which a
291 capital expenditure is associated, in any two-year period
292 of ten or more beds or more than ten percent, whichever
293 is less, of the bed capacity of such facility that increases
294 or decreases the bed capacity, or relocates beds from one
295 physical facility or site to another, but does not include
296 a change by which a health care facility reassigns
297 existing beds as swing beds between acute care and
298 long-term care categories. A series of changes to the bed
299 capacity of a health care facility in any two-year period,
300 each less than ten beds or ten percent of the bed capacity
301 of such facility, but which when taken together comprise
302 ten or more beds or more than ten percent of the bed
303 capacity of such facility, whichever is less, is a substan-
304 tial change to the bed capacity.

305 (ff) "Substantial change to the health services" of a
306 health care facility means the addition of a health
307 service which is offered by or on behalf of the health
308 care facility and which was not offered by or on behalf
309 of the facility within the twelve-month period before the
310 month in which the service is first offered, or the
311 termination of a health service which was offered by or
312 on behalf of the facility, but does not include the
313 providing of hospice care, ambulance service, wellness
314 centers or programs, adult day care, or respite care by
315 acute care facilities.

316 (gg) "To develop," when used in connection with
317 health services, means to undertake those activities
318 which upon their completion will result in the offer of
319 a new institutional health service or the incurring of a
320 financial obligation, in relation to the offering of such
321 a service.

§16-2D-4. Exemptions from certificate of need program.

- 1 (a) Except as provided in subdivision (h), section three
- 2 of this article, nothing in this article or the rules and
- 3 regulations adopted pursuant to the provisions of this
- 4 article may be construed to authorize the licensure,
- 5 supervision, regulation or control in any manner of: (1)

6 Private office practice of any one or more health
7 professionals licensed to practice in this state pursuant
8 to the provisions of chapter thirty of this code: *Provided,*
9 That such exemption from review of private office
10 practice shall not be construed to include such practices
11 where major medical equipment otherwise subject to
12 review under the provisions of this article is acquired,
13 offered or developed; (2) dispensaries and first-aid
14 stations located within business or industrial establish-
15 ments maintained solely for the use of employees:
16 *Provided, however,* That such facility does not contain
17 inpatient or resident beds for patients or employees who
18 generally remain in the facility for more than twenty-
19 four hours; (3) establishments, such as motels, hotels and
20 boardinghouses, which provide medical, nursing person-
21 nel and health related services; and (4) the remedial care
22 or treatment of residents or patients in any home or
23 institution conducted only for those who rely solely upon
24 treatment by prayer or spiritual means in accordance
25 with the creed or tenets of any recognized church or
26 religious denomination.

27 (b) (1) A certificate of need is not required for the
28 offering of an inpatient institutional health service or
29 the acquisition of major medical equipment for the
30 provision of an inpatient institutional health service or
31 the obligation of a capital expenditure for the provisions
32 of an inpatient institutional health service, if with
33 respect to such offering, acquisition or obligation, the
34 state agency has, upon application under subdivision (2),
35 subsection (b) of this section, granted an exemption to:

36 (A) A health maintenance organization or a combina-
37 tion of health maintenance organizations if (i) the
38 organization or combination of organizations has, in the
39 service area of the organization or the service areas of
40 the organizations in the combination, an enrollment of
41 at least fifty thousand individuals, (ii) the facility in
42 which the service will be provided is or will be
43 geographically located so that the service will be
44 reasonably accessible to such enrolled individuals, and
45 (iii) at least seventy-five percent of the patients who can
46 reasonably be expected to receive the institutional

47 health service will be individuals enrolled with such
48 organization or organizations in the combination;

49 (B) A health care facility if (i) the facility primarily
50 provides or will provide inpatient health services, (ii) the
51 facility is or will be controlled, directly or indirectly, by
52 a health maintenance organization or a combination of
53 health maintenance organizations which has, in the
54 service area of the organization or service areas of the
55 organizations in the combination, an enrollment of at
56 least fifty thousand individuals, (iii) the facility is or will
57 be geographically located so that the service will be
58 reasonably accessible to such enrolled individuals, and
59 (iv) at least seventy-five percent of the patients who can
60 reasonably be expected to receive the institutional
61 health service will be individuals enrolled with such
62 organization or organizations in the combination; or

63 (C) A health care facility, or portion thereof, if (i) the
64 facility is or will be leased by a health maintenance
65 organization or combination of health maintenance
66 organizations which has, in the service area of the
67 organization or the service areas of the organizations in
68 the combination, an enrollment of at least fifty thousand
69 individuals and on the date the application is submitted
70 under subdivision (2), subsection (b) of this section, at
71 least fifteen years remain in the term of the lease, (ii)
72 the facility is or will be geographically located so that
73 the service will be reasonably accessible to such enrolled
74 individuals, and (iii) at least seventy-five percent of the
75 patients who can reasonably be expected to receive the
76 new institutional health service will be individuals
77 enrolled with such organization.

78 (2) (A) A health maintenance organization, combina-
79 tion of health maintenance organizations, or other health
80 care facility is not exempt under subdivision (1),
81 subsection (b) of this section from obtaining a certificate
82 of need unless:

83 (i) It has submitted, at such time and in such form
84 and manner as the state agency shall prescribe, an
85 application for such exemption to the state agency;

86 (ii) The application contains such information respect-

87 ing the organization, combination or facility and the
88 proposed offering, acquisition or obligation as the state
89 agency may require to determine if the organization or
90 combination meets the requirements of subdivision (1),
91 subsection (b) of this section or the facility meets or will
92 meet such requirements; and

93 (iii) The state agency approves such application.

94 (B) The state agency shall approve an application
95 submitted under subparagraph (A), subdivision (2),
96 subsection (b) of this section, if it determines that the
97 applicable requirements of subdivision (1), subsection
98 (b) of this section, are met or will be met on the date
99 the proposed activity for which an exemption was
100 requested will be undertaken.

101 (3) A health care facility, or any part thereof, or
102 medical equipment with respect to which an exemption
103 was granted under subdivision (1), subsection (b) of this
104 section, may not be sold or leased and a controlling
105 interest in such facility or equipment or in a lease of
106 such facility or equipment may not be acquired and a
107 health care facility described in subparagraph (C),
108 subdivision (1), subsection (b) of this section, which was
109 granted an exemption under subdivision (1), subsection
110 (b) of this section, may not be used by any person other
111 than the lessee described in subparagraph (C), subdivi-
112 sion (1), subsection (b) of this section, unless:

113 (A) The state agency issues a certificate of need
114 approving the sale, lease, acquisition or use; or

115 (B) The state agency determines, upon application,
116 that the entity to which the facility or equipment is
117 proposed to be sold or leased, which intends to acquire
118 the controlling interest in or to use the facility is:

119 (i) A health maintenance organization or a combina-
120 tion of health maintenance organizations which meets
121 the enrollment requirements of part (i), subparagraph
122 (A), subdivision (1), subsection (b) of this section, and
123 with respect to such facility or equipment, the entity
124 meets the accessibility and patient enrollment require-
125 ments of parts (ii) and (iii), subparagraph (A), subdivi-
126 sion (1), subsection (b) of this section; or

127 (ii) A health care facility which meets the inpatient,
128 enrollment and accessibility requirements of parts (i),
129 (ii) and (iii), subparagraph (B), subdivision (1), subsec-
130 tion (b) of this section and with respect to its patients
131 meets the enrollment requirements of part (iv), subpa-
132 ragraph (B), subdivision (1), subsection (b) of this
133 section.

134 (4) In the case of a health maintenance organization
135 or an ambulatory care facility or health care facility
136 which ambulatory or health care facility is controlled,
137 directly or indirectly, by a health maintenance organ-
138 ization or a combination of health maintenance organ-
139 izations, the certificate of need requirements apply only
140 to the offering of inpatient institutional health services,
141 the acquisition of major medical equipment, and the
142 obligation of capital expenditures for the offering of
143 inpatient institutional health services and then only to
144 the extent that such offering, acquisition or obligation
145 is not exempt under subdivision (1), subsection (b) of this
146 section.

147 (5) The state agency shall establish the period within
148 which approval or disapproval by the state agency of
149 applications for exemptions under subdivision (1),
150 subsection (b) of this section, shall be made.

151 (c) (1) A health care facility is not required to obtain
152 a certificate of need for the acquisition of major medical
153 equipment to be used solely for research, the addition
154 of health services to be offered solely for research, or the
155 obligation of a capital expenditure to be made solely for
156 research if the health care facility provides the notice
157 required in subdivision (2), subsection (c) of this section,
158 and the state agency does not find, within sixty days
159 after it receives such notice, that the acquisition,
160 offering or obligation will, or will have the effect to:

161 (A) Affect the charges of the facility for the provision
162 of medical or other patient care services other than the
163 services which are included in the research;

164 (B) Result in a substantial change to the bed capacity
165 of the facility; or

166 (C) Result in a substantial change to the health
167 services of the facility.

168 (2) Before a health care facility acquires major
169 medical equipment to be used solely for research, offers
170 a health service solely for research, or obligates a capital
171 expenditure solely for research, such health care facility
172 shall notify in writing the state agency of such facility's
173 intent and the use to be made of such medical equip-
174 ment, health service or capital expenditure.

175 (3) If major medical equipment is acquired, a health
176 service is offered, or a capital expenditure is obligated
177 and a certificate of need is not required for such
178 acquisition, offering or obligation as provided in
179 subdivision (1), subsection (c) of this section, such
180 equipment or service or equipment or facilities acquired
181 through the obligation of such capital expenditure may
182 not be used in such a manner as to have the effect or
183 to make a change described in subparagraphs (A), (B)
184 and (C), subdivision (1), subsection (c) of this section
185 unless the state agency issues a certificate of need
186 approving such use.

187 (4) For purposes of this subsection, the term "solely
188 for research" includes patient care provided on an
189 occasional and irregular basis and not as part of a
190 research program.

191 (d) (1) The state agency may adopt regulations
192 pursuant to section eight of this article to specify the
193 circumstances under which a certificate of need may not
194 be required for the obligation of a capital expenditure
195 to acquire, either by purchase or under lease or
196 comparable arrangement, an existing health care
197 facility: *Provided*, That a certificate of need shall be
198 required for the obligation of a capital expenditure to
199 acquire, either by purchase or under lease or compar-
200 able arrangement, an existing health care facility if:

201 (A) The notice required by subdivision (2), subsection
202 (d) of this section is not filed in accordance with that
203 subdivision with respect to such acquisition; or (B) the

204 state agency finds, within thirty days after the date it
205 receives a notice in accordance with subdivision (2),
206 subsection (d) of this section, with respect to such
207 acquisition, that the services or bed capacity of the
208 facility will be changed by reason of said acquisition.

209 (2) Before any person enters into a contractual
210 arrangement to acquire an existing health care facility,
211 such person shall notify the state agency of his or her
212 intent to acquire the facility and of the services to be
213 offered in the facility and its bed capacity. Such notice
214 shall be made in writing and shall be made at least
215 thirty days before contractual arrangements are entered
216 into to acquire the facility with respect to which the
217 notice is given. The notice shall contain all information
218 the state agency requires in accordance with subsections
219 (e) and (s), section seven of this article.

220 (e) The state agency shall adopt regulations, pursuant
221 to section eight of this article, wherein criteria are
222 established to exempt from review the addition of
223 certain health services, not associated with a capital
224 expenditure, that are projected to entail annual operat-
225 ing costs of less than the expenditure minimum for
226 annual operating costs. For purposes of this subsection,
227 "expenditure minimum for annual operating costs"
228 means five hundred thousand dollars for the twelve-
229 month period beginning the first day of October, one
230 thousand nine hundred eighty-five, and for each twelve-
231 month period thereafter, the state agency may, by
232 regulations adopted pursuant to section eight of this
233 article, adjust the expenditure minimum for annual
234 operating costs to reflect the impact of inflation.

235 (f) The state agency may adopt regulations pursuant
236 to section eight of this article to specify the circumstan-
237 ces under which and the procedures by which a
238 certificate of need may not be required for the obligation
239 of a capital expenditure to acquire, either by purchase
240 or under lease or comparable arrangement, major
241 medical equipment which merely replaces medical
242 equipment which is already owned by the health care
243 facility and which has become outdated, worn-out or
244 obsolete.

245 (g) The state agency may adopt regulations pursuant
246 to section eight of this article to specify the circumstan-
247 ces under which and the procedures by which a
248 certificate of need may not be required for the obligation
249 of a capital expenditure in excess of the expenditure
250 minimum for certain items not directly related to the
251 provision of health services. The state agency shall
252 specify the types of items in the regulations which may
253 be so exempted from review.

254 (h) The state agency may adopt regulations pursuant
255 to section eight of this article to specify the circumstan-
256 ces under which and the procedures by which a
257 certificate of need may not be required for shared
258 services between two or more acute care facilities
259 providing services made available through new or
260 existing technology that can reasonably be mobile. The
261 state agency shall specify the types of items in the
262 regulations which may be so exempted from review.

263 (i) Nothing in this article shall be construed to require
264 the filing of a certificate of need application for any
265 expenditure, health service, or change in health service
266 which is exempt from review under this article.
267 However, the state agency may promulgate rules and
268 regulations pursuant to section eight of this article to
269 require the filing of a notice with the state agency by
270 a health care facility that proposes to make such an
271 expenditure, initiate a health service, or effect a change
272 in a health service for which the health care facility
273 claims an exemption from review. The state agency
274 shall, within ten days of a receipt of such notice, make
275 one of the following responses:

276 (1) Accept the claim of exemption;

277 (2) Require the health care facility to furnish the state
278 agency with additional information;

279 (3) Reject the claim of exemption; or

280 (4) Determine that a certificate of need application is
281 necessary for a review of the proposed expenditure, new
282 health service, or change in a health service in order to
283 determine if the claim of exemption may be upheld:

284 *Provided*, That when a new health service is proposed
285 to be developed, the state agency shall, within the ten
286 days of receipt of the required notice, determine
287 whether or not economic and geographic factors within
288 the geographic area of the proposed addition to service
289 are such that the proposed new health service will be
290 offered in competition with other health care facilities
291 providing the same or similar service. In the event that
292 an affirmative determination is made on the issue of
293 competition, then the state agency shall require a
294 certificate of need application for the proposed new
295 health service.

**§16-2D-5. Powers and duties of state health planning and
development agency.**

1 (a) The state agency is hereby empowered to admin-
2 ister the certificate of need program as provided by this
3 article.

4 (b) The state agency shall cooperate with the health
5 care planning council in developing rules and regula-
6 tions for the certificate of need program to the extent
7 appropriate for the achievement of efficiency in their
8 reviews and consistency in criteria for such reviews.

9 (c) The state agency may seek advice and assistance
10 of other persons, organizations, and other state agencies
11 in the performance of the state agency's responsibilities
12 under this article.

13 (d) For health services for which competition approp-
14 riately allocates supply consistent with the state health
15 plan, the state agency shall, in the performance of its
16 functions under this article, give priority, where
17 appropriate to advance the purposes of quality assu-
18 rance, cost effectiveness and access, to actions which
19 would strengthen the effect of competition on the supply
20 of such services.

21 (e) For health services for which competition does not
22 or will not appropriately allocate supply consistent with
23 the state health plan, the state agency shall, in the
24 exercise of its functions under this article, take actions,
25 where appropriate to advance the purposes of quality

26 assurance, cost effectiveness and access and the other
27 purposes of this article, to allocate the supply of such
28 services.

29 (f) The state agency is hereby empowered to order a
30 moratorium upon the processing of an application or
31 applications for the acquisition of major medical
32 equipment filed pursuant to section three of this article
33 and considered by the agency to be new medical
34 technology, when criteria and guidelines for evaluating
35 the need for such new medical technology have not yet
36 been adopted. Such moratoriums shall be declared by
37 a written order which shall detail the circumstances
38 requiring the moratorium. Upon the adoption of criteria
39 for evaluating the need for the new medical technology
40 affected by the moratorium, or ninety days from the
41 declaration of a moratorium, whichever is less, the
42 moratorium shall be declared to be over and affected
43 applications shall be processed pursuant to section six
44 of this article.

45 (g) Notwithstanding the provisions of section seven of
46 this article, the state agency may charge a fee for the
47 filing of any application, the filing of any notice in lieu
48 of an application, the filing of any exemption determi-
49 nation request, or the filing of any request for a
50 declaratory ruling. The fees charged may vary accord-
51 ing to the type of matter involved, the type of health
52 service or facility involved, or the amount of capital
53 expenditure involved. The state agency shall implement
54 this subsection by filing procedural rules pursuant to
55 chapter twenty-nine-a of this code. The fees charged
56 shall be deposited into a special fund known as the
57 certificate of need program fund to be expended for the
58 purposes of this article.

59 (h) No additional intermediate care facility/skilled
60 nursing facility (ICF/SNF) nursing home beds shall be
61 granted a certificate of need, except for applicants
62 which have filed letters of intent or applications for
63 certificates of need for such facilities prior to the
64 fifteenth day of March, one thousand nine hundred
65 eighty-seven, and except in the case of facilities designed
66 to replace existing beds in unsafe or substandard
67 existing facilities.

§16-2D-5a. Health care planning council; state health plan; regional health advisory councils.

1 (a) The department of health shall be responsible for
2 coordinating and developing the health planning
3 research efforts of the state and for all amendments,
4 revisions and updates of the state health plan referred
5 to herein.

6 (b) There is hereby created a fifteen member health
7 care planning council, whose purpose is to give input
8 and direction to the health care cost review authority
9 and to the West Virginia department of health in the
10 state health planning process and annual updates of the
11 state health plan.

12 (c) The state health plan heretofore approved by the
13 governor shall remain in effect until replaced or
14 modified as follows: The department of health shall
15 prepare a draft of all amendments to the state health
16 plan and shall transmit the drafts to the council and to
17 the state agency. The state agency may present amend-
18 ments to the department of health proposal to the
19 council for consideration. The council shall then hold
20 public hearings on each amendment as prepared by the
21 department of health. Following the public hearings, the
22 council may amend the proposal and, if the proposed
23 amendment is approved by a majority of the council, the
24 council shall submit the proposed amendment to the
25 governor for his approval.

26 (d) The state health plan shall describe those institu-
27 tional health services which entail annual operating cost
28 in excess of the expenditure minimum for annual
29 operating costs which are needed to provide for the well-
30 being of persons receiving care within the state. At a
31 minimum, these shall include acute inpatient (including
32 psychiatric inpatient, obstetrical inpatient, and neonatal
33 inpatient), rehabilitation, and long-term care services.
34 The state health plan shall also describe other health
35 services needed to provide for the well-being of persons
36 receiving care within the state, including, at a min-
37 imum, preventive, ambulatory, and home health servi—

38 ces and treatment for alcohol and drug abuse. The state
39 health plan shall also describe the number and type of
40 resources, including facilities, personnel, major medical
41 equipment, and other resources required to meet the
42 goal of the plan and shall state the extent to which
43 existing health care facilities are in need of moderniza-
44 tion, conversion to other uses, or closure and the extent
45 to which new health care facilities need to be con-
46 structed or acquired. Finally, the state health plan shall
47 contain a detailed statement of goals.

48 (e) The health care planning council shall be com-
49 posed of the director of the West Virginia department
50 of health, the commissioner of the West Virginia
51 department of human services, the commissioner of
52 insurance, the chairman of the public employees
53 insurance board, the chairman of the West Virginia
54 health care cost review authority, and the executive
55 director of the commission on aging by virtue of their
56 appointive office; five public members, who shall consist
57 of one representative of senior citizens, one representa-
58 tive of labor, one representative of business, one
59 representative of the health insurance industry, one
60 representative from regional health advisory councils
61 who shall be nominated by the regional health advisory
62 councils; and four representatives of the health care
63 industry, one of whom shall represent physicians, one of
64 whom shall represent registered nurses, one of whom
65 shall represent the long term care industry, and one of
66 whom shall represent hospitals. The members shall be
67 appointed by the governor with the advice and consent
68 of the senate. Appointment of members of the health
69 care planning council shall be made with due diligence
70 to ensure membership thereon by persons representing
71 cultural, demographic and ethnic segments of the
72 population of this state. Lay and professional members
73 of the health care planning council shall be appointed
74 for terms of three years each, except that of those first
75 appointed, three members shall be appointed for terms
76 of one year, three members for terms of two years and
77 three members for terms of three years, and each shall
78 be eligible for reappointment to a subsequent three-year
79 term. Vacancies shall be filled in the same manner as

80 the original appointments for the duration of the
81 unexpired term.

82 (f) The presence of a majority of the members of the
83 health care planning council shall constitute a quorum
84 for the transaction of business. The health care planning
85 council shall elect a chairman, vice chairman, and such
86 other officers as it shall deem necessary who shall serve
87 at the will and pleasure of the members. The health care
88 planning council shall meet no less than four times
89 during the calendar year, and additional meetings shall
90 be held upon call of the chairman or a majority of the
91 members.

92 (g) The health care planning council members shall
93 be reimbursed for expenses necessary to carry out their
94 responsibilities and for reasonable travel expenses to
95 attend health care planning council meetings.

96 (h) The health care cost review authority shall
97 transmit to the department of health such data, records,
98 reports, analyses and summaries filed, collected and
99 developed by the authority as are necessary to health
100 planning functions or related to health planning
101 activities.

102 (i) In recognition of the importance of local commu-
103 nity involvement in health planning and development
104 efforts, each planning and development council region
105 of the state shall have a regional health advisory council
106 which shall meet at least quarterly and shall review
107 health care needs and organize public hearings on the
108 health care issues within the region. Regional health
109 advisory councils shall regularly report to the health
110 care planning council regarding recommendations on
111 health care needs and concerns in their respective
112 regions. Regional health advisory councils shall be
113 provided sufficient staff by the department of health to
114 carry out their responsibility under this article. The
115 department of health shall arrange for an annual
116 meeting of the regional health advisory councils for
117 purposes of exchanging information, continuing educa-
118 tion and electing a regional health advisory council
119 representative to serve on the health care planning

120 council. Each regional health advisory council shall
121 consist of members from each county within the region,
122 which members shall be appointed by the respective
123 county commissions. One representative appointed from
124 each county shall be actively involved in health care
125 delivery in the county which such member is appointed,
126 and two representatives from each county within the
127 region shall have no direct affiliation with any health
128 care provider and shall be consumers of health care
129 services. No more than two members appointed from
130 each county may be from the same political party. The
131 presence of a majority of members at regional health
132 advisory council meetings shall constitute a quorum for
133 purposes of transacting business.

134 (j) The council shall make its own report to the state
135 agency, the governor and the Legislature within thirty
136 days of the close of each fiscal year. This report shall
137 include summaries of all meetings of the council and any
138 public comments on decisions, together with any
139 suggestions and policy recommendations. In addition,
140 the council shall make a study of the impact of the
141 moratorium imposed by subsection (h), section five of
142 this article as to its effects on the long-term care
143 availability and accessibility and report to the Legisla-
144 ture on or before the first day of January, one thousand
145 nine hundred eighty-eight.

146 (k) In the event that the health planning function
147 established by this section is not funded through the
148 general revenue fund, the state agency will provide, on
149 an annual basis, through interagency transfer to the
150 department of health the sum of two hundred thousand
151 dollars for health planning programs described herein.

152 (l) The department of health shall promulgate rules
153 and regulations in accordance with chapter twenty-nine-
154 a to further implement the provisions of this section.

§16-2D-7. Procedures for certificate of need reviews.

1 (a) Prior to submission of an application for a
2 certificate of need, the state agency shall require the
3 submission of long-range plans by health care facilities
4 with respect to the development of proposals subject to

5 review under this article. The plans shall be in such
6 form and contain such information as the state agency
7 shall require.

8 (b) An application for a certificate of need shall be
9 submitted to the state agency prior to the offering or
10 development of all new institutional services within this
11 state. Persons proposing new institutional health
12 services shall submit letters of intent not less than
13 fifteen days prior to submitting an application. The
14 letters of intent shall be of such detail as specified by
15 the state agency.

16 (c) The state agency may adopt regulations pursuant
17 to section eight of this article for:

18 (1) Provision for applications to be submitted in
19 accordance with a timetable established by the state
20 agency;

21 (2) Provision for such reviews to be undertaken in a
22 timely fashion; and

23 (3) Except for proposed new institutional health
24 services which meet the requirements for consideration
25 under subsection (g), section nine of this article with
26 regard to the elimination or prevention of certain
27 imminent safety hazards or to comply with certain
28 licensure or accreditation standards, provision for all
29 completed applications pertaining to similar types of
30 services, facilities or equipment to be considered in
31 relation to each other, at least three times a year.

32 (d) An application for a certificate of need shall
33 specify the time the applicant will require to make such
34 service or equipment available or to obligate such
35 expenditure and a timetable for making such service or
36 equipment available or obligating such expenditure.

37 (e) The application shall be in such form and contain
38 such information as the state agency shall establish by
39 rule or regulation, but requests for information shall be
40 limited to only that information which is necessary for
41 the state agency to perform the review.

42 (f) Within fifteen days of receipt of application, the

43 state agency shall determine if the application is
44 complete. The state agency may request additional
45 information from the applicant.

46 (g) The state agency shall provide timely written
47 notice to the applicant and to all affected persons of the
48 beginning of the review, and to any person who has
49 asked the state agency to place the person's name on a
50 mailing list maintained by the state agency. Notification
51 shall include the proposed schedule for review, the
52 period within which a public hearing during the course
53 of the review may be requested by affected persons,
54 which period may not be less than thirty days from the
55 date of the written notification of the beginning of the
56 review required by this section, and the manner in
57 which notification will be provided of the time and place
58 of any public hearing so requested. For the purposes of
59 this subsection, the date of notification is the date on
60 which the notice is sent or the date on which the notice
61 appears in a newspaper of general circulation, whi-
62 chever is later.

63 (h) Written notification to members of the public and
64 third-party payers may be provided through newspap-
65 ers of general circulation in the applicable health
66 service area and public information channels; notifica-
67 tion to all other affected persons shall be by mail which
68 may be as part of a newsletter.

69 (i) If, after a review has begun, the state agency
70 requires the person subject to the review to submit
71 additional information respecting the subject of the
72 review, such person shall be provided at least fifteen
73 days to submit the information and the state agency
74 shall, at the request of such person, extend the review
75 period by fifteen days. This extension applies to all other
76 applications which have been considered in relation to
77 the application for which additional information is
78 required.

79 (j) The state agency shall adopt schedules for reviews
80 which provide that no review may, to the extent
81 practicable, take longer than ninety days from the date
82 that notification, as described under subsection (g) of

83 this section, is sent to the applicant to the date of the
84 final decision of the state agency, and in the case of
85 expedited applications, may by regulations adopted
86 pursuant to section eight of this article provide for a
87 shortened review period.

88 (k) The state agency shall adopt criteria for determin-
89 ing when it would not be practicable to complete a
90 review within ninety days.

91 (l) The state agency shall provide a public hearing in
92 the course of agency review if requested by any affected
93 person and the state agency may on its own initiate such
94 a public hearing.

95 (1) The state agency shall, prior to such hearing,
96 provide notice of such hearing and shall conduct such
97 hearing in accordance with administrative hearing
98 requirements in article five, chapter twenty-nine-a of
99 this code, and its procedure adopted pursuant to this
100 section.

101 (2) In a hearing any person has the right to be
102 represented by counsel and to present oral or written
103 arguments and evidence relevant to the matter which
104 is the subject of the hearing. Any person affected by the
105 matter which is the subject of the hearing may conduct
106 reasonable questioning of persons who make factual
107 allegations relevant to such matter.

108 (3) The state agency shall maintain a verbatim record
109 of the hearing.

110 (4) After the commencement of a hearing on the
111 applicant's application and before a decision is made
112 with respect to it, there may be no ex parte contacts
113 between (a) the applicant for the certificate of need, any
114 person acting on behalf of the applicant or holder of a
115 certificate of need, or any person opposed to the issuance
116 of a certificate for the applicant and (b) any person in
117 the state agency who exercises any responsibility
118 respecting the application.

119 (5) The state agency may not impose fees for such a
120 public hearing.

121 (m) If a public hearing is not conducted during the
122 review of a new institutional health service, the state
123 agency may, by regulations adopted pursuant to section
124 eight of this article, provide for a file closing date
125 during the review period after which date no other
126 factual information or evidence may be considered in
127 the determination of the application for the certificate
128 of need. A detailed itemization of documents in the state
129 agency file on a proposed new institutional health
130 service shall, on request, be made available by the state
131 agency at any time before the file closing date.

132 (n) The extent of additional information received by
133 the state agency from the applicant for a certificate of
134 need after a review has begun on the applicant's
135 proposed new institutional health service, with respect
136 to the impact on such new institutional health service
137 and additional information which is received by the
138 state agency from the applicant, may be cause for the
139 state agency to determine the application to be a new
140 proposal, subject to a new review cycle.

141 (o) The state agency shall in timely fashion notify,
142 upon request, providers of health services and other
143 persons subject to review under this article of the status
144 of the state agency review of new institutional health
145 services subject to review, findings made in the course
146 of such review, and other appropriate information
147 respecting such review.

148 (p) The state agency shall prepare and publish, at
149 least annually, reports of reviews completed and being
150 conducted, with general statements about the status of
151 each review still in progress and the findings and
152 rationale for each completed review since the publica-
153 tion of the last report.

154 (q) The state agency shall provide for access by the
155 general public to all applications reviewed by the state
156 agency and to all other pertinent written materials
157 essential to agency review.

158 (r) (1) Any person may request in writing a public
159 hearing for purposes of reconsideration of a state agency
160 decision. No fees may be imposed by the state agency

161 for the hearing. For purposes of this section, a request
162 for a public hearing for purposes of reconsideration
163 shall be deemed to have shown good cause if, in a
164 detailed statement, it:

165 (A) Presents significant, relevant information not
166 previously considered by the state agency, and demon-
167 strates that with reasonable diligence the information
168 could not have been presented before the state agency
169 made its decision;

170 (B) Demonstrates that there have been significant
171 changes in factors or circumstances relied upon by the
172 state agency in reaching its decision;

173 (C) Demonstrates that the state agency has materially
174 failed to follow its adopted procedures in reaching its
175 decision; or

176 (D) Provides such other bases for a public hearing as
177 the state agency determines constitutes good cause.

178 (2) To be effective, a request for such a hearing shall
179 be received within thirty days after the date upon which
180 all parties received notice of the state agency decision,
181 and the hearing shall commence within thirty days of
182 receipt of the request.

183 (3) Notification of such public hearing shall be sent,
184 prior to the date of the hearing, to the person requesting
185 the hearing, the person proposing the new institutional
186 health service, and shall be sent to others upon request.

187 (4) The state agency shall hold public reconsideration
188 hearings in accordance with the provisions for adminis-
189 trative hearings contained in:

190 (A) Its adopted procedures;

191 (B) Ex parte contact provisions of subdivision (4),
192 subsection (l) of this section; and

193 (C) The administrative procedures for contested cases
194 contained in article five, chapter twenty-nine-a of this
195 code.

196 (5) The state agency shall make written findings
197 which state the basis for its decision within forty-five
198 days after the conclusion of such hearing.

199 (6) A decision of the state agency following a recon-
 200 sideration hearing shall be considered a decision of the
 201 state agency for purposes of sections nine and ten of this
 202 article and for purposes of the notification of the status
 203 of review, findings and annual report provisions of
 204 subsections (o) and (p) of this section.

205 (s) The state agency may adopt regulations pursuant
 206 to section eight of this article for reviews and such
 207 regulations may vary according to the purpose for which
 208 a particular review is being conducted or the type of
 209 health services being reviewed.

210 (t) Notwithstanding other provisions of this article,
 211 the state agency shall adopt rules and regulations for
 212 determining when there is an application which war-
 213 rants expedited review. If procedures adopted by the
 214 state agency to handle expedited applications do not
 215 conform to the provisions of this article, such procedures
 216 shall be approved by the federal secretary of health and
 217 human services and shall be adopted as regulations
 218 pursuant to section eight of this article.

ARTICLE 29B. WEST VIRGINIA HEALTH CARE COST REVIEW AUTHORITY.

§16-29B-11. Certificate of need program.

§16-29B-19. Rate-setting powers generally.

§16-29B-20. Rate determination.

§16-29B-21. Procedure for obtaining initial rate schedule; adjustments and
 revisions of rate schedules.

§16-29B-28. Termination date.

§16-29B-11. Certificate of need program.

1 The board shall carry out and perform all functions
 2 set forth in article two-d of this chapter, including
 3 review and approval or disapproval of capital expendi-
 4 tures for health care facilities or services. In making
 5 decisions in the certificate of need review process, the
 6 board shall be guided by the state health plan approved
 7 by the governor.

§16-29B-19. Rate-setting powers generally.

1 (a) The board shall have power: (1) To initiate reviews
 2 and investigations of hospital rates and establish and

3 approve such rates; (2) to initiate reviews and investi-
4 gations of hospital rates for specific services and the
5 component factors which determine such rates; (3) to
6 initiate reviews and investigations of hospital budgets
7 and the specific components of such budgets; and (4) to
8 approve or disapprove hospital rates and budgets taking
9 into consideration the criteria set forth in section twenty
10 of this article.

11 (b) In the interest of promoting the most efficient and
12 effective use of hospital service, the board may adopt
13 and approve alternative methods of rate determination.
14 The board may also adopt methods of charges and
15 payments of an experimental nature which are in the
16 public interest and consistent with the purpose of this
17 article.

§16-29B-20. Rate determination.

1 (a) Upon commencement of review activities, no rates
2 may be approved by the board nor payment be made
3 for services provided by hospitals under the jurisdiction
4 of the board by any purchaser or third-party payor to
5 or on behalf of any purchaser or class of purchasers
6 unless:

7 (1) The costs of the hospital's services are reasonably
8 related to the services provided and the rates are
9 reasonably related to the costs;

10 (2) The rates are equitably established among all
11 purchasers or classes of purchasers within a hospital
12 without discrimination unless federal or state statutes or
13 regulations conflict with this requirement. Equity
14 among classes of purchasers may be achieved by
15 considering demonstrated differences in the financial
16 requirements of hospitals resulting from service,
17 coverage and payment characteristics of a class of
18 purchasers. The provision for differentials in rates
19 among classes of purchasers should be carried out in the
20 context of each hospital's total financial requirements
21 for the efficient provision of necessary services. The
22 board shall institute a study of objective methods of
23 computing the percentage differential to be utilized for
24 all hospitals in determining appropriate projected gross

25 revenues under subsection (b) of this section. Such study
26 shall include a review and determination of the relevant
27 and justifiable economic factors which can be considered
28 in setting such differential. The differential shall be
29 allowed for only those activities and programs which
30 result in quantifiable savings to the hospital with
31 respect to patient care costs, bad debts, free care or
32 working capital, or reductions in the payments of other
33 payors. Each component utilized in determining the
34 differential shall be individually quantified so that the
35 differential shall equal the value assigned to each
36 component. The board shall consider such matters as
37 coverage to individual subscribers, the elderly and small
38 groups, payment practices, savings in hospital adminis-
39 trative costs, cost containment programs and working
40 capital. The study shall also provide for a method of
41 annual recomputation of the differential and triennial
42 recomputation of all other components. The board may
43 contract with any person or entity to assist the board
44 in the discharge of its duties as herein stated. Whoever
45 obstructs any person or entity conducting a study
46 authorized under the provisions of this section shall be
47 deemed to be in violation of this article and shall be
48 subject to any appropriate actions, including injunctive
49 relief, as may be necessary for the enforcement of this
50 section;

51 (3) The rates of payment for medicaid are reasonable
52 and adequate to meet the costs which must be incurred
53 by efficiently and economically operated hospitals
54 subject to the provisions of this article. The rates shall
55 take into account the situation of hospitals which serve
56 disproportionate numbers of low income patients and
57 assure that individuals eligible for medicaid have
58 reasonable access, taking into account geographic
59 location and reasonable travel time, to inpatient hospital
60 services of adequate quality;

61 (4) The rates are equitable in comparison to prevail-
62 ing rates for similar services in similar hospitals as
63 determined by the board;

64 (5) In no event shall a hospital's receipt of emergency
65 disaster funds from the federal government be included

66 in such hospital's gross revenues for either rate-setting
67 or assessment purposes.

68 (b) In the interest of promoting efficient and appropri-
69 ate utilization of hospital services the board shall
70 review and make findings on the appropriateness of
71 projected gross revenues for a hospital as such revenues
72 relate to charges for services and anticipated incidence
73 of service. The board shall further render a decision as
74 to the amount of net revenue over expenditures that is
75 appropriate for the effective operation of the hospital.

76 (c) When applying the criteria set forth above, the
77 board shall consider all relevant factors including, but
78 not limited to, the following: The economic factors in the
79 hospital's area; the hospital's efforts to share services;
80 the hospital's efforts to employ less costly alternatives
81 for delivering substantially similar services or produc-
82 ing substantially similar or better results in terms of the
83 health status of those served; the efficiency of the
84 hospital as to cost and delivery of health care; the
85 quality of care; occupancy level; a fair return on
86 invested capital, not otherwise compensated for;
87 whether the hospital is operated for profit or not for
88 profit; costs of education; and, income from any
89 investments and assets not associated with patient care,
90 including, but not limited to, parking garages, residen-
91 ces, office buildings, and income from foundations and
92 restricted funds whether or not so associated.

93 (d) Wages, salaries and benefits paid to or on behalf
94 of nonsupervisory employees of hospitals subject to this
95 article shall not be subject to review unless the board
96 first determines that such wages, salaries and benefits
97 may be unreasonably or uncustomarily high or low. Said
98 exemption does not apply to accounting and reporting
99 requirements contained in this article, nor to any that
100 may be established by the board. "Nonsupervisory
101 personnel," for the purposes of this section, means, but
102 is not limited to, employees of hospitals subject to the
103 provisions of this article who are paid on an hourly
104 basis.

105 (e) Reimbursement of capital and operating costs for

106 new services and capital projects subject to article two-
107 d of this chapter shall not be allowed by the board if
108 such costs were incurred subsequent to the eighth day
109 of July, one thousand nine hundred seventy-seven, unless
110 they were exempt from review or approved by the state
111 health planning and development agency prior to the
112 first day of July, one thousand nine hundred eighty-four,
113 pursuant to the provisions of article two-d of this
114 chapter.

115 (f) The board shall consult with relevant licensing
116 agencies and may require them to provide written
117 findings with regard to their statutory functions and
118 information obtained by them in the pursuit of those
119 functions. Any licensing agency empowered to suggest
120 or mandate changes in buildings or operations of
121 hospitals shall give notice to the board together with any
122 findings.

123 (g) Rates shall be set by the board in advance of the
124 year during which they apply except for the procedure
125 set forth in subsection (c), section twenty-one of this
126 article and shall not be adjusted for costs actually
127 incurred.

128 (h) All determinations, orders and decisions of the
129 board with respect to rates and revenues shall be
130 prospective in nature.

131 (i) No hospital may charge for services at rates in
132 excess of those established in accordance with the
133 requirements of and procedures set forth in this article.

134 (j) Notwithstanding any other provision of this article,
135 the board shall approve all requests for rate increases
136 by hospitals where the rate of increase in the hospital's
137 gross inpatient revenues per discharge for nonmedicare
138 and nonmedicaid payors is equal to or less than the rate
139 of inflation for the hospital industry nationally as
140 measured by the most recent hospital market basket
141 component of the consumer price index as reported by
142 the United States bureau of labor statistics applicable
143 to the hospital's fiscal year. The board may, by regula-
144 tion, impose reporting requirements to ensure that a
145 hospital does not exceed the rate of increases permitted
146 herein.

§16-29B-21. Procedure for obtaining initial rate schedule; adjustments and revisions of rate schedules.

1 (a) No hospital subject to this article may change or
2 amend its schedule of rates except in accordance with
3 the following procedures:

4 (1) Any request for a change in rate schedules or
5 other changes must be filed in writing to the board with
6 such supporting data as the hospital seeking to change
7 its rates considers appropriate, in the form prescribed
8 by the board. Upon receipt of notice, the board, if it
9 considers necessary, may hold a public hearing on the
10 proposed change. Such hearing shall be held no later
11 than forty-five days after receipt of the notice. The
12 review of the proposed change may not exceed an overall
13 period of one hundred eighty days from the date of filing
14 to the date of the board's order. If the board fails to
15 complete its review of the proposed change within the
16 time period specified for the review, the proposed
17 change shall be deemed to have been approved by the
18 board. Any proposed change shall go into effect upon the
19 date specified in the order;

20 (2) Each hospital shall establish, in a written report
21 which shall be incorporated into each proposed rate
22 application, that it has thoroughly investigated and
23 considered:

24 (A) The economic and social impact of any proposed
25 rate increase, or service decrease, on hospital cost
26 containment and upon health care purchasers, including
27 classes of purchasers, such as the elderly and low and
28 fixed income persons;

29 (B) State-of-the-art advances in health care cost
30 containment, hospital management and rate design, as
31 alternatives to or in mitigation of any rate increase, or
32 service decrease, which report shall describe the state-
33 of-the-art advances considered and shall contain specific
34 findings as to each consideration, including the reasons
35 for adoption or rejection of each;

36 (C) Implementation of cost control systems, including
37 the elimination of unnecessary or duplicative facilities
38 and services, promotion of alternative forms of care, and
39 other cost control mechanisms;

40 (D) Initiatives to create alternative delivery systems;
41 and

42 (E) Efforts to encourage third-party payors, includ-
43 ing, but not limited to, insurers, health service, care and
44 maintenance organizations, to control costs, including a
45 combination of education, persuasion, financial incen-
46 tives and disincentives to control costs;

47 (3) In the event the board modifies the request of a
48 hospital for a change in its rates so that the hospital
49 obtains only a partial increase in its rate schedule, the
50 hospital shall have the right to accept the benefits of the
51 partial increase in rates and charge its purchasers
52 accordingly without in any way adversely affecting or
53 waiving its right to appeal that portion of the decision
54 and order of the board which denied the remainder of
55 the requested rate increase.

56 (b) The board shall allow a temporary change in a
57 hospital's rates which may be effective immediately
58 upon filing and in advance of review procedures when
59 a hospital files a verified claim that such temporary rate
60 changes are in the public interest, and are necessary to
61 prevent insolvency, to maintain accreditation or for
62 emergency repairs or to relieve undue financial hard-
63 ship. The verified claim shall state the facts supporting
64 the hospital's position, the amount of increase in rates
65 required to alleviate the situation, and shall summarize
66 the overall effect of the rate increase. The claim shall
67 be verified by either the chairman of the hospital's
68 governing body or by the chief executive officer of the
69 hospital.

70 (c) Following receipt of the verified claim for tempor-
71 ary relief, the board shall review the claim through its
72 usual procedures and standards; however, this power of
73 review does not affect the hospital's ability to place the
74 temporary rate increase into effect immediately. The
75 review of the hospital's claim shall be for a permanent

76 rate increase and the board may include such other
77 factual information in the review as may be necessary
78 for a permanent rate increase review. As a result of its
79 findings from the permanent review, the board may
80 allow the temporary rate increase to become permanent,
81 to deny any increase at all, to allow a lesser increase,
82 or to allow a greater increase.

83 (d) When any change affecting an increase in rates
84 goes into effect before a final order is entered in the
85 proceedings, for whatever reasons, where it deems it
86 necessary and practicable, the board may order the
87 hospital to keep a detailed and accurate account of all
88 amounts received by reason of the increase in rates and
89 the purchasers and third-party payors from whom such
90 amounts were received. At the conclusion of any
91 hearing, appeal or other proceeding, the board may
92 order the hospital to refund with interest to each
93 affected purchaser and/or third-party payor any part of
94 the increase in rates that may be held to be excessive
95 or unreasonable. In the event a refund is not practicable,
96 the hospital shall, under appropriate terms and condi-
97 tions determined by the board, charge over and amor-
98 tize by means of a temporary decrease in rates whatever
99 income is realized from that portion of the increase in
100 rates which was subsequently held to be excessive or
101 unreasonable.

102 (e) The board, upon a determination that a hospital
103 has overcharged purchasers or charged purchasers at
104 rates not approved by the board or charged rates which
105 were subsequently held to be excessive or unreasonable,
106 may prescribe rebates to purchasers and third-party
107 payors in effect by the aggregate total of the overcharge.

108 (f) The board may open a proceeding against any
109 hospital at any time with regard to compliance with
110 rates approved and the efficiency and effectiveness of
111 the care being rendered in the hospital.

§16-29B-28. Termination date.

1 After having conducted a performance and fiscal
2 audit through its joint committee on government
3 operations, pursuant to section nine, article ten, chapter

4 four of this code, the Legislature hereby finds and
5 declares that the health care cost review authority
6 should be continued and reestablished. Accordingly,
7 notwithstanding the provisions of subsection seven,
8 section four, article ten, chapter four of this code, the
9 health care cost review authority shall continue to exist
10 until the first day of July, one thousand nine hundred
11 ninety-one.

CHAPTER 62

(H. B. 2207—By Delegates White and Leary)

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

AN ACT to amend and reenact sections four and five, article twenty-nine-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the extension of the legislative task force on uncompensated health care and medicaid expenditures.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29C. INDIGENT CARE.

§16-29C-4. Legislative study; appointment of members; expenses; reports; termination.

§16-29C-5. Effective date and termination date.

§16-29C-4. Legislative study; appointment of members; expenses; reports; termination.

1 Not later than the first day of June, one thousand nine
2 hundred eighty-five, the president of the Senate and
3 speaker of the House of Delegates of the West Virginia
4 Legislature shall appoint a legislative task force on
5 uncompensated health care and medicaid expenditures
6 which shall meet, study and make recommendations as
7 herein provided.

8 The task force shall be composed of three members
9 of the Senate appointed by the president from the
10 membership of the Senate standing committee on health
11 and human resources, three members of the House of
12 Delegates appointed by the speaker from the member-
13 ship of the House of Delegates standing committee on
14 health and human resources, and a number of citizens
15 appointed jointly by the president and speaker which,
16 in their discretion, adequately provides for the approp-
17 riate representation of the interests of the providers of
18 health care services, the providers of health care
19 insurance, state departments involved in the administra-
20 tion of health care and health care related programs and
21 the citizens of this state. Of the members of the Senate
22 appointed by the president, not more than two shall be
23 from the same political party. Of the members of the
24 House of Delegates appointed by the speaker, not more
25 than two shall be from the same political party.

26 Members originally appointed to the task force shall
27 serve for terms beginning on the date of appointment
28 and ending on the thirtieth day of June, one thousand
29 nine hundred ninety, unless sooner replaced by the
30 president or the speaker as applicable, or, in the
31 discretion of the president and the speaker, unless the
32 work of the task force is completed or the need for the
33 task force no longer exists prior to that date. The task
34 force shall cease to exist on the thirtieth day of June,
35 one thousand nine hundred ninety.

36 The task force shall meet on such dates as may be
37 approved by the joint committee on government and
38 finance for the regular meetings of its subcommittees
39 unless approval is first obtained from the joint commit-
40 tee on government and finance for additional meetings.
41 The task force shall conduct studies on the amount of
42 funds expended by hospitals and other health care
43 providers of this state for services to persons who are
44 unable to pay for those services and for which they
45 receive no other form of reimbursement, the extent to
46 which persons in this state forego needed medical
47 services because of insufficient income and assets to pay
48 for those services, the extent to which the state is

49 maximizing available federal programs and moneys in
50 providing health care services to the citizens of this
51 state, the operation of the programs and funds created
52 by this article and the roles of the public, private and
53 private nonprofit sectors in providing health care
54 services to the citizens of this state. The task force shall
55 also study the state medicaid program in order to
56 determine if the state medicaid agency, as the payor of
57 last resort, is expending maximum effort to identify
58 alternate private insurance resources for medicaid
59 beneficiaries and shall study the feasibility and financial
60 impact upon the state of assuring increased access to
61 medicaid beneficiaries to primary health care in the
62 nonhospital setting by requiring enrollment in a
63 primary care clinic program, if available, and of the
64 establishment of different and lesser schedules of
65 payment for primary health services delivered by a
66 hospital emergency room as compared to the schedule
67 of payments for emergency room services of a true
68 medical emergency nature. The task force shall make
69 such recommendations as it deems appropriate to
70 address the needs identified in the studies.

71 The task force shall file an interim report with the
72 joint committee on government and finance and the
73 Legislature on the date of the last meeting of the joint
74 committee on government and finance prior to com-
75 mencement of the regular session of the Legislature in
76 each year before the final report of the task force is filed
77 with the joint committee on government and finance and
78 the Legislature on or before the thirtieth day of June,
79 one thousand nine hundred ninety.

80 The members of the task force shall be entitled to
81 compensation at the rate authorized for members of the
82 Legislature participating in legislative interim meetings
83 and to reimbursement for reasonable and necessary
84 expenses actually incurred in attending meetings of the
85 task force, except that any employee of the state
86 appointed to the task force is not entitled to such
87 compensation. Funds necessary for the work of the task
88 force shall be paid from joint appropriations to the
89 Senate and House of Delegates but no such funds shall

91 be spent or obligations incurred in the conduct of such
92 work without prior approval of the joint committee on
93 government and finance.

§16-29C-5. Effective date and termination date.

1 This article shall be effective from passage, and,
2 notwithstanding the provisions of section four of this
3 article, shall terminate on the thirtieth day of June, one
4 thousand nine hundred ninety.

CHAPTER 63

(H. B. 2367—By Delegate Humphreys)

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

AN ACT to amend and reenact section nine, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the pari-mutuel system of wagering on dog racing generally; authorizing such system and establishing limitations thereon; authorizing licensees to deduct certain commissions; use of such commissions; providing for the establishment of special funds by the racing commission and prescribing the use thereof; increasing commissions deducted by licensees on certain pari-mutuel pools on dog racing; percentages of such commissions to be paid to county or municipality or state highway fund for the use of the department of highways; reporting of revised commissions to be made by dog racing licensees; requiring licensees to establish special funds and prescribing the use thereof; retention of breakage; access of auditors to certain records and to location where pari-mutuel wagering conducted or calculated; prohibitions; and mandating certain distributions from commissions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.**PART VI. PARI-MUTUEL SYSTEM OF WAGERING AUTHORIZED;
COMMISSIONS DEDUCTED FROM PARI-MUTUEL POOLS.****§19-23-9. Pari-mutuel system of wagering authorized;
licensee authorized to deduct commissions
from pari-mutuel pools; retention of break-
age; auditing; minors.**

1 (a) The pari-mutuel system of wagering upon the
2 results of any horse or dog race at any horse or dog race
3 meeting conducted or held by any licensee is hereby
4 authorized, if and only if such pari-mutuel wagering is
5 conducted by such licensee within the confines of such
6 licensee's horse racetrack or dog racetrack, and the
7 provisions of section one, article ten, chapter sixty-one
8 of this code, relating to gaming, shall not apply to the
9 pari-mutuel system of wagering in manner and form as
10 provided for in this article at any horse or dog race
11 meeting within this state where horse or dog racing
12 shall be permitted for any purse by any licensee. A
13 licensee shall permit or conduct only the pari-mutuel
14 system of wagering within the confines of such licensee's
15 racetrack at which any horse or dog race meeting is
16 conducted or held.

17 (b) A licensee is hereby expressly authorized to
18 deduct a commission from the pari-mutuel pools, as
19 follows:

20 (1) The commission deducted by any licensee from the
21 pari-mutuel pools on thoroughbred horse racing, except
22 from thoroughbred horse racing pari-mutuel pools
23 involving what is known as multiple betting in which
24 the winning pari-mutuel ticket or tickets are deter-
25 mined by a combination of two or more winning horses,
26 shall not exceed seventeen and one-fourth percent of the
27 total of such pari-mutuel pools for the day. Out of such
28 commission, as is mentioned in this subdivision, the
29 licensee (i) shall pay the pari-mutuel pools tax provided
30 for in subsection (b), section ten of this article, (ii) shall
31 make a deposit into a special fund to be established by

32 the licensee and to be used for the payment of regular
33 purses offered for thoroughbred racing by the licensee,
34 which deposits out of pari-mutuel pools for each day
35 during the months of January, February, March,
36 October, November and December shall be seven and
37 seventy-five one-thousandths percent of such pari-
38 mutuel pools, and which, out of pari-mutuel pools for
39 each day during all other months, shall be six and five
40 hundred seventy-five one-thousandths percent of such
41 pari-mutuel pools, (iii) shall, after allowance for the
42 exclusion given by subsection (b), section ten of this
43 article, make a deposit into a special fund to be
44 established by the racing commission and to be used for
45 the payment of breeders, awards and capital improve-
46 ments as authorized by section thirteen-b of this article,
47 which deposits out of pari-mutuel pools shall from the
48 effective date of this section and for fiscal year one
49 thousand nine hundred eighty-five, be four-tenths
50 percent; for fiscal year one thousand nine hundred
51 eighty-six, be seven-tenths percent; for fiscal year one
52 thousand nine hundred eighty-seven, be one percent; for
53 fiscal year one thousand nine hundred eighty-eight, be
54 one and one-half percent; and for fiscal year one
55 thousand nine hundred eighty-nine, and each year
56 thereafter, be two percent of such pools, and (iv) shall
57 pay one tenth of one percent of such pari-mutuel pools
58 into the general fund of the county commission of the
59 county in which the racetrack is located, except if within
60 a municipality, then to such municipal general fund.
61 The remainder of the commission shall be retained by
62 the licensee.

63 The commission deducted by any licensee from the
64 pari-mutuel pools on thoroughbred horse racing involv-
65 ing what is known as multiple betting in which the
66 winning pari-mutuel ticket or tickets are determined by
67 a combination of two winning horses shall not exceed
68 nineteen percent and by a combination of three or more
69 winning horses shall not exceed twenty-five percent of
70 the total of such pari-mutuel pools for the day. Out of
71 such commission, as is mentioned in this paragraph, the
72 licensee (i) shall pay the pari-mutuel pools tax provided
73 for in subsection (b), section ten of this article, (ii) shall

74 make a deposit into a special fund to be established by
75 the licensee and to be used for the payment of regular
76 purses offered for thoroughbred racing by the licensee,
77 which deposits out of pari-mutuel pools for each day
78 during the months of January, February, March,
79 October, November and December for pools involving a
80 combination of two winning horses shall be seven and
81 ninety-five one-hundredths percent and out of pari-
82 mutuel pools for each day during all other months shall
83 be seven and forty-five one-hundredths percent of such
84 pari-mutuel pools; and involving a combination of three
85 or more winning horses for the months of January,
86 February, March, October, November and December
87 the deposits out of such fund shall be ten and ninety-
88 five one-hundredths percent of such pari-mutuel pools;
89 and which, out of pari-mutuel pools for each day during
90 all other months, shall be ten and forty-five one-
91 hundredths percent of such pari-mutuel pools, (iii) shall,
92 after allowance for the exclusion given by subsection (b),
93 section ten of this article, make a deposit into a special
94 fund to be established by the racing commission and to
95 be used for the payment of breeders' awards and capital
96 improvements as authorized by section thirteen-b of this
97 article, which deposits out of pari-mutuel pools shall
98 from the effective date of this section and for fiscal year
99 one thousand nine hundred eighty-five, be four-tenths
100 percent; for fiscal year one thousand nine hundred
101 eighty-six, be seven-tenths percent; for fiscal year one
102 thousand nine hundred eighty-seven, be one percent; for
103 fiscal year one thousand nine hundred eighty-eight, be
104 one and one-half percent; and for fiscal year one
105 thousand nine hundred eighty-nine, and each year
106 thereafter, be two percent of such pools, and (iv) shall
107 pay one tenth of one percent of such pari-mutuel pools
108 into the general fund of the county commission of the
109 county in which the racetrack is located, except if within
110 a municipality, then to such municipal general fund.
111 The remainder of the commission shall be retained by
112 the licensee.

113 The deposits into special fund established by the
114 racing commission to be used for payments of breeders'
115 awards and other expenses authorized by section

116 thirteen-b of this article shall be reduced by fifty
117 percent in the event the average daily pari-mutuel pool
118 for any calendar year is less than the average daily pari-
119 mutuel pool for the calendar year ended the thirty-first
120 day of December, one thousand nine hundred eighty-
121 three, in amount equal to eleven percent of the average
122 daily pari-mutuel pool for said calendar year ended the
123 thirty-first day of December, one thousand nine hundred
124 eighty-three. Of the amounts so reduced, fifty percent
125 shall be paid into the special purse fund established in
126 section nine-b of this article.

127 The commission deducted by the licensee under
128 subdivision (1), subsection (b) of this section may be
129 reduced only by mutual agreement between the licensee
130 and a majority of the trainers and horse owners licensed
131 by subsection (a), section two of this article or their
132 designated representative. Such reduction in licensee
133 commissions may be for a particular race, racing day
134 or days or for a horse race meeting. Fifty percent of
135 such reduction shall be retained by the licensee from the
136 amounts required to be paid into the special fund
137 established by the licensee under the provisions of
138 subdivision (1), subsection (b) of this section. The racing
139 commission shall promulgate such reasonable rules and
140 regulations as are necessary to implement the foregoing
141 provisions.

142 (2) The commission deducted by any licensee from the
143 pari-mutuel pools on harness racing shall not exceed
144 seventeen and one-half percent of the total of such pari-
145 mutuel pools for the day. Out of such commission the
146 licensee shall pay the pari-mutuel pools tax provided for
147 in subsection (c), section ten of this article, and shall pay
148 one tenth of one percent into the general fund of the
149 county commission of the county in which the racetrack
150 is located, except if within a municipality, then to such
151 municipal general fund. The remainder of the commis-
152 sion shall be retained by the licensee.

153 (3) The commission deducted by any licensee from the
154 pari-mutuel pools on dog racing, except from dog racing
155 pari-mutuel pools involving what is known as multiple
156 betting in which the winning pari-mutuel ticket or

157 tickets are determined by a combination of two or more
158 winning dogs, shall not exceed sixteen and thirty one-
159 hundredths percent (16.30%) of the total of all pari-
160 mutuel pools for the day. The commission deducted by
161 any licensee from the pari-mutuel pools on dog racing
162 involving what is known as multiple betting in which
163 the winning pari-mutuel ticket or tickets are deter-
164 mined by a combination of two winning dogs shall not
165 exceed nineteen percent (19%), by a combination of three
166 winning dogs shall not exceed twenty-one percent (21%),
167 and by a combination of four or more winning dogs shall
168 not exceed twenty-three percent (23%) of the total of
169 such pari-mutuel pools for the day. Out of such commis-
170 sions, the licensee shall pay the pari-mutuel pools tax
171 provided for in subsection (d), section ten of this article,
172 and one tenth of one percent of such pari-mutuel pools
173 into the general fund of the county commission of the
174 county in which the racetrack is located. In addition, out
175 of such commissions, if the racetrack is located within
176 a municipality, then the licensee shall also pay three
177 tenths of one percent of the pari-mutuel pools into the
178 general fund of the municipality; or, if the racetrack is
179 located outside of a municipality, then the licensee shall
180 also pay three tenths of one percent of the pari-mutuel
181 pools into the state road fund for use by the department
182 of highways in accordance with the provisions of this
183 subdivision (3). The remainder of the commission shall
184 be retained by the licensee.

185 For the purposes of this section, "municipality" shall
186 mean and include any Class I, Class II and Class III city
187 and any Class IV town or village, incorporated as a
188 municipal corporation under the laws of this state prior
189 to the first day of January, one thousand nine hundred
190 eighty-seven.

191 Each dog racing licensee, when required by the
192 provisions of this subdivision (3) to pay a percentage of
193 its commissions to the state road fund for use by the
194 department of highways, shall transmit the required
195 funds, in such manner and at such times as the racing
196 commission shall by procedural rule direct, to the state
197 treasurer for deposit in the state treasury to the credit

198 of the department of highways state road fund. All
199 funds collected and received in the state road fund
200 pursuant to the provisions of this subdivision shall be
201 used by the department of highways in accordance with
202 the provisions of article seventeen-a, chapter seventeen
203 of this code for the acquisition of right-of-way for, the
204 construction of, the reconstruction of and the improve-
205 ment or repair of any interstate or other highway,
206 secondary road, bridge and toll road in the state. If on
207 the first day of July, one thousand nine hundred eighty-
208 nine, any area encompassing a dog racetrack has
209 incorporated as a Class I, Class II or Class III city or
210 as a Class IV town or village, whereas such city, town
211 or village was not incorporated as such on the first day
212 of January, one thousand nine hundred eighty-seven,
213 then on and after the first day of July, one thousand nine
214 hundred eighty-nine, any balances in the state road fund
215 existing as a result of payments made under the
216 provisions of this subdivision may be used by the state
217 road fund for any purpose for which other moneys in
218 such fund may lawfully be used, and in lieu of further
219 payments to the state road fund, the licensee of a
220 racetrack which is located in such municipality shall
221 thereafter pay three tenths of one percent of the pari-
222 mutuel pools into the general fund of such municipality.
223 If no such incorporation occurs before the first day of
224 July, one thousand nine hundred eighty-nine, then
225 payments to the state road fund shall thereafter
226 continue as provided for under the provisions of this
227 subdivision.

228 A dog racing licensee, before deducting the commis-
229 sions authorized by this subdivision (3), shall give
230 written notification to the racing commission not less
231 than thirty days prior to any change in the percentage
232 rates for such commissions. The racing commission shall
233 prescribe blank forms for filing such notification. Such
234 notification shall disclose the following: (1) The revised
235 commissions to be deducted from the pari-mutuel pools
236 each day on win, place and show betting and on
237 different forms of multiple bettings; (2) the dates to be
238 included in such revised betting; (3) such other informa-
239 tion as may be required by the racing commission.

240 The licensee shall establish a special fund to be used
241 only for capital improvements or long-term debt
242 amortization or both: *Provided*, That any licensee,
243 heretofore licensed for a period of eight years prior to
244 the effective date of the amendment made to this section
245 during the regular session of the Legislature held in the
246 year one thousand nine hundred eighty-seven, shall
247 establish such special fund to be used only for capital
248 improvements or physical plant maintenance, or both,
249 at such licensee's licensed facility or at such licensee's
250 commonly owned racing facility located within this
251 state. Deposits made into such funds shall be in an
252 amount equal to twenty-five percent of the increased
253 rate total over and above the applicable rate in effect
254 as of the first day of January, one thousand nine
255 hundred eighty-seven, of the pari-mutuel pools for the
256 day. Any amount deposited into such funds must be
257 expended or liability therefor incurred within a period
258 of two years from the date of deposit. Any funds not so
259 expended shall forthwith be transferred into the state
260 general fund after expiration of the two-year period.

261 The licensee shall make a deposit into a special fund
262 established by the licensee and used for payment of
263 regular purses offered for dog racing, which deposits
264 out of the licensee's commissions for each day shall be
265 three and seventy-five one-hundredths percent (3.75%) of
266 the pari-mutuel pools.

267 The licensee shall further establish a special fund to
268 be used exclusively for marketing and promotion
269 programs; such funds shall be in an amount equal to five
270 percent over and above the applicable rates in effect as
271 of the first day of January, one thousand nine hundred
272 eighty-seven, of the total pari-mutuel pools for the day.

273 Notwithstanding the provisions of subsection (d),
274 section ten of this article, the amendments to this section
275 by the acts of the Legislature, regular session, one
276 thousand nine hundred eighty-seven, shall not reduce
277 any pari-mutuel wagering tax paid by any dog racing
278 licensee below the total dollar level paid by such licensee
279 for and during the calendar year one thousand nine
280 hundred eighty-six: *Provided*, That nothing herein shall

281 affect any increase in any such tax: *Provided, however,*
282 That, if the number of annual dog racing meetings
283 approved by the racing commission for any dog racing
284 licensee is reduced below four hundred by the racing
285 commission, or as a result of acts of God, including, but
286 not limited to, flood, fire, wind damage, work stoppages
287 or other events beyond the control of the licensee (but
288 not including inclement weather), then any increase in
289 the pari-mutuel wagering tax for any calendar year in
290 excess of the total dollar level paid by such licensee for
291 the calendar year one thousand nine hundred eighty-six,
292 shall be reduced in like proportion.

293 The racing commission shall prepare and transmit
294 annually to the governor and the Legislature a report
295 of the activities of the racing commission under this
296 subdivision (3). The report shall include a statement of:
297 The amount of commissions retained by licensees; the
298 amount of taxes paid to the state; the amounts paid to
299 municipalities, counties and the department of highways
300 dog racing fund; the amounts deposited by licensees into
301 special funds for capital improvements or long-term
302 debt amortization, and a certified statement of the
303 financial condition of any licensee depositing into such
304 fund; the amounts paid by licensees into special funds
305 and used for regular purses offered for dog racing; the
306 amounts paid by licensees into special funds and used
307 for marketing and promotion programs; and such other
308 information as the racing commission may deem
309 appropriate for review.

310 The racing commission shall report to the governor,
311 president of the Senate, speaker of the House, and the
312 Legislature, on or before the thirty-first day of De-
313 cember, one thousand nine hundred ninety-three, on the
314 effects of the amendments to this article by the acts of
315 the Legislature, regular session, one thousand nine
316 hundred eighty-seven, on dog racing licensees and pari-
317 mutuel taxation for use by the Legislature in review of
318 such amendments.

319 (c) In addition to any such commission, a licensee of
320 horse race or dog race meetings shall also be entitled
321 to retain the legitimate breakage, which shall be made

322 and calculated to the dime, and from such breakage, the
323 licensee of a horse race meeting (excluding dog race
324 meetings), shall deposit daily fifty percent of the total
325 of such breakage retained by the licensee into the special
326 fund created pursuant to the provisions of subdivision
327 (1), subsection (b) of this section for the payment of
328 regular purses.

329 (d) The director of audit, and any other auditors
330 employed by the racing commission who shall also be
331 certified public accountants or experienced public
332 accountants, shall have free access to the space or
333 enclosure where the pari-mutuel system of wagering is
334 conducted or calculated at any horse or dog race
335 meeting for the purpose of ascertaining whether or not
336 the licensee is deducting and retaining only a commis-
337 sion as provided in this section and is otherwise
338 complying with the provisions of this section. They shall
339 also, for the same purposes only, have full and free
340 access to all records and papers pertaining to such pari-
341 mutuel system of wagering, and shall report to the
342 racing commission in writing, under oath, whether or
343 not the licensee has deducted and retained any commis-
344 sion in excess of that permitted under the provisions of
345 this section or has otherwise failed to comply with the
346 provisions of this section.

347 (e) No licensee shall permit or allow any individual
348 under the age of eighteen years to wager at any horse
349 or dog racetrack, knowing or having reason to believe
350 that such individual is under the age of eighteen years.

351 (f) Notwithstanding the foregoing provisions of
352 subdivision (1), subsection (b) of this section, to the
353 contrary, a thoroughbred licensee qualifying for and
354 paying the alternate reduced tax on pari-mutuel pools
355 provided in section ten of this article shall distribute the
356 commission authorized to be deducted by subdivision (1),
357 subsection (b), section nine of this article as follows: (i)
358 The licensee shall pay the alternate reduced tax
359 provided in section ten of this article; (ii) shall pay one
360 tenth of one percent of such pari-mutuel pools into the
361 general fund of the county commission of the county in
362 which the racetrack is located, except if within a

363 municipality, then to such municipal general fund; (iii)
364 one half of the remainder of the commission shall be
365 paid into the special fund established by the licensee and
366 to be used for the payment of regular purses offered for
367 thoroughbred racing by the licensee; and (iv) the amount
368 remaining after the payments required above shall be
369 retained by the licensee.

CHAPTER 64

(H. B. 2638—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

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

AN ACT to amend and reenact sections three, ten and eleven, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the human rights commission, changing the definition of age; creating a direct appeal from commission orders to the supreme court of appeals; changing the procedure for enforcement of commission orders; and changing the time limit for filing a complaint.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-3. Definitions.

§5-11-10. Discriminatory practices; investigations, hearings, procedures and orders.

§5-11-11. Appeal and enforcement of commission orders.

§5-11-3. Definitions.

1 When used in this article:

2 (a) The term "person" means one or more individuals,
3 partnerships, associations, organizations, corporations,
4 labor organizations, cooperatives, legal representatives,
5 trustees, trustees in bankruptcy, receivers and other
6 organized groups of persons;

7 (b) The term "commission" means the West Virginia
8 human rights commission;

9 (c) The term "director" means the executive director
10 of the commission;

11 (d) The term "employer" means the state, or any
12 political subdivision thereof, and any person employing
13 twelve or more persons within the state: *Provided*, That
14 such terms shall not be taken, understood or construed
15 to include a private club;

16 (e) The term "employee" shall not include any individ-
17 ual employed by his parents, spouse or child, or in the
18 domestic service of any person;

19 (f) The term "labor organization" includes any
20 organization which exists for the purpose, in whole or
21 in part, for collective bargaining or for dealing with
22 employers concerning grievances, terms or conditions of
23 employment, or for other mutual aid or protection in
24 relation to employment;

25 (g) The term "employment agency" includes any
26 person undertaking with or without compensation to
27 procure, recruit, refer or place employees. A newspaper
28 engaged in the activity of advertising in the normal
29 course of its business shall not be deemed to be an
30 employment agency;

31 (h) The term "discriminate" or "discrimination"
32 means to exclude from, or fail or refuse to extend to,
33 a person equal opportunities because of race, religion,
34 color, national origin, ancestry, sex, age, blindness or
35 handicap and includes to separate or segregate;

36 (i) The term "unlawful discriminatory practices"
37 includes only those practices specified in section nine of
38 this article;

39 (j) The term "place of public accommodations" means
40 any establishment or person, as defined herein, includ-
41 ing the state, or any political or civil subdivision thereof,
42 which offers its services, goods, facilities or accommo-
43 dations to the general public, but shall not include any
44 accommodations which are in their nature private;

45 (k) The term "housing accommodations" means any
46 building or portion thereof, which is used or intended
47 for use as the residence or sleeping place of one or more
48 persons. Nothing contained in this definition or this
49 article shall apply to the rental of a room or rooms in
50 a rooming house occupied by the owner as a place of
51 residence and containing no more than four rented
52 rooms, or rooms to be rented;

53 (l) The term "real property" includes real estate,
54 lands, leaseholds, commercial or industrial buildings
55 and any vacant land offered for sale or rent on which
56 the construction of a housing accommodation, commer-
57 cial or industrial building is intended, and any land
58 operated as a trailer camp or rented or leased for the
59 use, parking or storage of mobile homes or house
60 trailers;

61 (m) The term "real estate broker" includes any
62 person, firm or corporation who, for a fee, commission
63 or other valuable consideration, or by reason of a
64 promise or reasonable expectation thereof, lists for sale,
65 sells, exchanges, buys or rents, or offers or attempts to
66 negotiate a sale, exchange, purchase, or rental of real
67 estate or an interest therein, or collects or offers or
68 attempts to collect rent for the use of real estate or
69 solicits for prospective purchaser or assists or directs in
70 the procuring of prospects or the negotiation or closing
71 of any transaction which does or is contemplated to
72 result in the sale, exchange, leasing, renting or auction-
73 ing of any real estate or negotiates, offers or attempts
74 or agrees to negotiate a loan secured or to be secured
75 by mortgage or other encumbrance upon transfer of any
76 real estate for others, or any person who, for pecuniary
77 gain or expectation of pecuniary gain, conducts a public
78 or private competitive sale of lands or any interest in
79 lands. In the sale of lots, the term "real estate broker"
80 shall also include any person, partnership, association or
81 corporation employed by or on behalf of the owner or
82 owners of lots or other parcels of real estate, at a stated
83 salary, or upon a commission, or upon a salary and
84 commission, or otherwise to sell such real estate, or any
85 parts thereof, in lots or other parcels, and who shall sell

86 or exchange, or offer or attempt or agree to negotiate
87 the sale or exchange, of any such lot or parcel of real
88 estate. A newspaper engaged in the activity of adver-
89 tising in the normal course of its business shall not be
90 deemed to be a real estate broker;

91 (n) The term "real estate salesman" includes any
92 person who, for compensation, valuable consideration or
93 commission, or other thing of value, or by reason of a
94 promise or reasonable expectation thereof, is employed
95 by and operates under the supervision of a real estate
96 broker to sell, buy or offer to buy or negotiate the
97 purchase, sale or exchange of real estate, offers or
98 attempts to negotiate a loan secured or to be secured by
99 a mortgage or other encumbrance upon or transfer of
100 real estate for others, or to collect rents for the use of
101 real estate, or to solicit for prospective purchasers or
102 lessees of real estate, or who is employed by a licensed
103 real estate broker to sell or offer to sell lots or other
104 parcels of real estate, at a stated salary, or upon a
105 commission, or upon a salary and commission, or
106 otherwise to sell real estate, or any parts thereof, in lots
107 or other parcels;

108 (o) The term "purchaser" includes any occupant,
109 prospective occupant, lessee, prospective lessee, renter,
110 prospective renter, buyer or prospective buyer;

111 (p) The term "owner" shall include the owner, lessee,
112 sublessee, assignee, manager, agents, or other person,
113 firm or corporation having the right to sell, rent or lease
114 any housing accommodation or real property within the
115 state of West Virginia or any agent of any of these;

116 (q) The term "age" means the age of forty or above;

117 (r) The term "rooming house" means a house or
118 building where there are one or more bedrooms which
119 the proprietor can spare for the purpose of giving
120 lodgings to such persons as he chooses to receive;

121 (s) For the purpose of this article, a person shall be
122 considered to be blind only if his central visual acuity
123 does not exceed twenty/two hundred in the better eye
124 with correcting lenses, or if his visual acuity is greater

125 than twenty/two hundred but is occasioned by a
126 limitation in the fields of vision such that the widest
127 diameter of the visual field subtends an angle no greater
128 than twenty degrees;

129 (t) The term "handicap" means any physical or mental
130 impairment which substantially limits one or more of an
131 individual's major life activities.

§5-11-10. Discriminatory practices; investigations, hearings, procedures and orders.

1 Any individual claiming to be aggrieved by an alleged
2 unlawful discriminatory practice shall make, sign and
3 file with the commission a verified complaint, which
4 shall state the name and address of the person, em-
5 ployer, labor organization, employment agency, owner,
6 real estate broker, real estate salesman or financial
7 institution alleged to have committed the unlawful
8 discriminatory practice complained of, and which shall
9 set forth the particulars thereof and contain such other
10 information as may be required by the commission's
11 rules and regulations. The commission upon its own
12 initiative, or the attorney general, shall, in like manner,
13 make, sign and file such complaint. Any employer,
14 whose employees, or some of them, hinder or threaten
15 to hinder compliance with the provisions of this article,
16 shall file with the commission a verified complaint,
17 asking for assistance by conciliation or other remedial
18 action and, during such period of conciliation or other
19 remedial action, no hearings, orders or other actions
20 shall be held, made or taken by the commission against
21 such employer. Any complaint filed pursuant to this
22 article must be filed within one hundred eighty days
23 after the alleged act of discrimination.

24 After the filing of any complaint, or whenever there
25 is reason to believe that an unlawful discriminatory
26 practice has been committed, the commission shall make
27 a prompt investigation in connection therewith.

28 If it shall be determined after such investigation that
29 no probable cause exists for substantiating the allega-
30 tions of the complaint, the commission shall, within ten
31 days from such determination, cause to be issued and

32 served upon the complainant written notice of such
33 determination, and the said complainant or his attorney
34 may, within ten days after such service, file with the
35 commission a written request for a meeting with the
36 commission to show probable cause for substantiating
37 the allegations of the complaint. If it shall be deter-
38 mined after such investigation or meeting that probable
39 cause exists for substantiating the allegations of the
40 complaint, the commission shall immediately endeavor
41 to eliminate the unlawful discriminatory practices
42 complained of by conference, conciliation and persua-
43 sion. The members of the commission and its staff shall
44 not disclose what has transpired in the course of such
45 endeavors: *Provided*, That the commission may publish
46 the facts in the case of any complaint which has been
47 dismissed, and the terms of conciliation when the
48 complaint has been adjusted, without disclosing the
49 identity of the parties involved.

50 In case of failure so to eliminate such practice or in
51 advance thereof, if in the judgment of the commission
52 circumstances so warrant, the commission shall cause to
53 be issued and served a written notice, together with a
54 copy of such complaint as the same may have been
55 amended, in the manner provided by law for the service
56 of summons in civil actions, requiring the person,
57 employer, labor organization, employment agency,
58 owner, real estate broker, real estate salesman or
59 financial institution named in such complaint, hereinaf-
60 ter referred to as respondent, to answer the charges of
61 such complaint at a hearing before the commission in
62 the county where the respondent resides or transacts
63 business at a time and place to be specified in such
64 notice: *Provided*, That said written notice be served at
65 least thirty days prior to the time set for the hearing.

66 The case in support of the complaint shall be pres-
67 ented before the commission by one of its attorneys or
68 agents. The respondent may file a written, verified
69 answer to the complaint and appear at such hearing in
70 person or otherwise, with or without counsel, and submit
71 testimony and evidence. Except as provided in this
72 article, all of the pertinent provisions of article five,

73 chapter twenty-nine-a of this code shall apply to and
74 govern the hearing and the administrative procedures
75 in connection with and following such hearing, with like
76 effect as if the provisions of said article five were set
77 forth in extenso in this section.

78 If, after such hearing and consideration of all of the
79 testimony, evidence and record in the case, the commis-
80 sion shall find that a respondent has engaged in or is
81 engaging in any unlawful discriminatory practice as
82 defined in this article, the commission shall issue and
83 cause to be served on such respondent an order to cease
84 and desist from such unlawful discriminatory practice
85 and to take such affirmative action, including, but not
86 limited to, hiring, reinstatement or upgrading of
87 employees, with or without back pay, admission or
88 restoration to membership in any respondent labor
89 organization, or the admission to full and equal enjoy-
90 ment of the services, goods, facilities, or accommoda-
91 tions offered by any respondent place of public accom-
92 modation, and the sale, purchase, lease, rental or
93 financial assistance to any complainant otherwise
94 qualified for the housing accommodation or real
95 property, denied in violation of this article, as in the
96 judgment of the commission, will effectuate the pur-
97 poses of this article, and including a requirement for
98 report of the manner of compliance. Such order shall be
99 accompanied by findings of fact and conclusions of law
100 as specified in section three, article five, chapter twenty-
101 nine-a of this code.

102 If, after such hearing and consideration of all of the
103 testimony, evidence and record in the case, the commis-
104 sion shall find that a respondent has not engaged in such
105 unlawful discriminatory practice, the commission shall
106 state its findings of fact and conclusions of law as
107 aforesaid and shall issue and cause to be served on the
108 complainant an order dismissing the said complaint as
109 to such respondent.

110 A copy of its order shall be delivered in all cases by
111 the commission to the complainant, the respondent, the
112 attorney general and to such other public officers as the
113 commission may deem proper. Any such order shall not

114 be enforceable except as provided in section eleven of
115 this article.

§5-11-11. Appeal and enforcement of commission orders.

1 (a) From any final order of the commission, an
2 application for review may be prosecuted by either
3 party to the supreme court of appeals within thirty days
4 from the receipt thereof by the filing of a petition
5 therefor to such court against the commission and the
6 adverse party as respondents, and the clerk of such
7 court shall notify each of the respondents and the
8 commission of the filing of such petition. The commis-
9 sion shall, within ten days after receipt of such notice,
10 file with the clerk of the court the record of the
11 proceedings had before it, including all the evidence.
12 The court or any judge thereof in vacation may
13 thereupon determine whether or not a review shall be
14 granted. And if granted to a nonresident of this state,
15 he shall be required to execute and file with the clerk
16 before such order or review shall become effective, a
17 bond, with security to be approved by the clerk,
18 conditioned to perform any judgment which may be
19 awarded against him thereon. The commission may
20 certify to the court and request its decision of any
21 question of law arising upon the record, and withhold
22 its further proceeding in the case, pending the decision
23 of court on the certified question, or until notice that the
24 court has declined to docket the same. If a review be
25 granted or the certified question be docketed for
26 hearing, the clerk shall notify the board and the parties
27 litigant or their attorneys and the commission of the fact
28 by mail. If a review be granted or the certified question
29 docketed, the case shall be heard by the court in the
30 manner provided for other cases.

31 The appeal procedure contained in this subsection
32 shall be the exclusive means of review, notwithstanding
33 the provisions of chapter twenty-nine-a of this code:
34 *Provided*, That such exclusive means of review shall not
35 apply to any case wherein an appeal or a petition for
36 enforcement of a cease and desist order has been filed
37 with a circuit court of this state prior to the first day
38 of April, one thousand nine hundred eighty-seven.

39 (b) In the event that any person shall fail to obey a
40 final order of the commission within thirty days after
41 receipt of the same, or, if applicable, within thirty days
42 after a final order of the supreme court of appeals, a
43 party or the commission may seek an order from the
44 circuit court for its enforcement. Such proceeding shall
45 be initiated by the filing of a petition in said court, and
46 served upon the respondent in the manner provided by
47 law for the service of summons in civil actions; a hearing
48 shall be held on such petition within sixty days of the
49 date of service. The court may grant appropriate
50 temporary relief, and shall make and enter upon the
51 pleadings, testimony and proceedings such order as is
52 necessary to enforce the order of the commission or
53 supreme court of appeals.

CHAPTER 65

(Com. Sub. for H. B. 2216—By Delegates Ashley and Flanigan)

[Passed March 14, 1987; in effect July 1, 1987. Vetoes by the Governor. Passed over veto.]

AN ACT to amend article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve, relating to the medicaid program for maternity and infant care; setting forth legislative intent and requirements in respect thereof; and providing for cooperation and funds transfer between the department of health and department of human services in implementation thereof, together with required specified dollar increase and effective date thereof.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-12. Medicaid program; maternity and infant care.

1 (a) The Legislature finds that high rates of infant

2 mortality and morbidity are costly to the state in terms
3 of human suffering and of expenditures for long-term
4 institutionalization, special education and medical care.
5 It is well documented that appropriate care during
6 pregnancy and delivery can prevent many of the
7 expensive, disabling problems our children experience.
8 There exists a crisis in this state relating to the
9 availability of obstetrical services, particularly to
10 patients in rural areas, and to the cost patients must pay
11 for obstetrical services. An increase in payments for
12 total obstetrical care is needed so that providers will be
13 encouraged to perform this vital service for medicaid
14 patients, enabling these patients to receive quality
15 medical care and to give birth to healthier babies and,
16 consequently, improving the health status of the next
17 generation.

18 The Legislature further recognizes that public and
19 private insurance mechanisms remain inadequate, and
20 poor women and children are among the most likely to
21 be without insurance. Generally, low-income, uninsured
22 children receive half as much health care as their
23 insured counterparts. The state is now investing millions
24 to care for sick infants whose deaths and disabilities
25 could have been avoided.

26 It is the intent of the Legislature that the department
27 of human services participate in the medicaid program
28 for indigent children and pregnant women established
29 by Congress under the Consolidated Omnibus Budget
30 Reconciliation Act (COBRA), Public Law 99-272, and
31 the Sixth Omnibus Budget Reconciliation Act (SOBRA),
32 Public Law 99-504.

33 (b) The department of human services shall:

34 (1) Extend the medicaid coverage to pregnant women
35 and infants below the federal poverty level.

36 (2) As provided under COBRA and SOBRA, infants
37 shall be included under the medicaid coverage, with
38 children under the age of one being eligible no later
39 than July 1, 1987; children under the age of two being

40 eligible on October 1, 1987; children under the age of
41 three being eligible on October 1, 1988; children under
42 the age of four being eligible on October 1, 1989; and
43 children under the age of five being eligible on October
44 1, 1990.

45 (3) Elect the federal options provided under COBRA
46 and SOBRA, impacting pregnant women and children
47 below the poverty level: *Provided, however,* That no
48 provision in this article shall restrict the department of
49 human services in exercising new options provided by
50 or to be in compliance with new federal legislation that
51 further expands eligibility for children and pregnant
52 women.

53 (4) Enter into an interagency agreement with the
54 department of health whereby the department of health
55 is responsible for the implementation and program
56 design for a maternal and infant health care system to
57 reduce infant mortality in West Virginia. The health
58 system design may include quality assurance measures,
59 case management and patient outreach activities. The
60 department of human services shall assume responsibil-
61 ity for claims processing in accordance with established
62 fee schedules, and financial aspects of the program
63 necessary to draw down available federal dollars and to
64 meet federal rules and regulations.

65 (5) The department of health shall transfer to the
66 department of human services through interagency
67 agreement such state funds as are necessary to imple-
68 ment this program to the department of human services
69 medical services account; and the department of human
70 services shall, through inter-program transfer, provide
71 such state funds as are necessary to implement this
72 program.

73 (6) Beginning the first day of July, one thousand nine
74 hundred eighty-seven, the state department of human
75 services shall increase to six hundred dollars the
76 reimbursement rates under the medicaid program for
77 prenatal care, delivery, and post-partum care.

CHAPTER 66

(H. B. 2355—By Delegates Brown and Hatfield)

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

AN ACT to amend article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen, relating to establishing a pilot program for certain AFDC recipients seeking self-employment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-13. Pilot program for certain aid recipients seeking self-employment.

1 (a) The Legislature finds and declares that a pilot
2 program which allows recipients of benefits of the
3 federal aid to families with dependent children program
4 (AFDC), Title 42 §601 et seq., United States Code, to
5 maintain their benefits during the start-up phase of
6 their self-supporting business, will assist these individ-
7 uals in becoming independent of all public assistance.
8 This pilot program will provide the opportunity for
9 AFDC recipients to improve their quality of life and to
10 apply their entrepreneurial skills in the market place.
11 In addition, this program will help contribute to the tax
12 base and may provide additional jobs.

13 (b) The department of human services shall develop
14 and implement during the fiscal year beginning the first
15 day of July, one thousand nine hundred eighty-seven, a
16 pilot program testing the feasibility of treating, with
17 respect to the continuation of benefits until self suffi-
18 ciency is achieved and public assistance is no longer
19 required, the efforts of AFDC recipients to become self-
20 employed in a similar manner as efforts are treated

21 under other existing department programs to seek other
22 employment or training. The pilot program shall consist
23 of up to twenty participants in no more than five
24 counties.

25 (c) Eligibility for the pilot program shall consist of
26 current AFDC recipients selected through a voluntary,
27 informed consent process and withdrawal from the
28 program shall not lead to automatic loss of benefits,
29 except that eligibility may be redetermined.

30 (d) During the start up period of self-employment,
31 which shall in no instance exceed two years, the
32 participant shall continue receiving public assistance
33 benefits at the level at which she or he was receiving
34 them at the time of entry into the pilot program.

35 (e) A participant shall be permitted to separate
36 business assets from personal assets during start up
37 activity.

38 (f) The department shall establish guidelines by
39 which the AFDC recipient's business assets shall be
40 evaluated during the start up period as an indication
41 that the business enterprise is providing personal
42 income sufficient to replace to public assistance benefits
43 and other noncash benefits which may be affected by the
44 personal income ceiling. When the assets of the business
45 enterprise reach that level determined to be sufficient,
46 the AFDC recipient shall have the burden of showing
47 why the business income is not of a level sufficient to
48 terminate the public assistance benefits subject to
49 provision of subsection (d) of this section.

50 (g) Guidelines for evaluation shall be based primarily
51 on criteria utilized by small business loan officers and
52 others of like expertise to determine what level of assets
53 is necessary to maintain the type of business undertaken
54 by the recipient. The department may establish an
55 advisory group of persons engaged in small business or
56 other appropriate members to establish such criteria.

57 (h) Individual case evaluations by these criteria shall
58 be done in consultation with a technical assistance
59 provider or other monitor who has had direct involve-
60 ment with the participant under review.

61 (i) Technical assistance shall be included in the pilot
62 program and the department may contract with exist-
63 ing training programs or other qualified providers with
64 experience relevant to pilot program participants for
65 such technical assistance. It shall include, but not be
66 limited to, basic business planning, fiscal management
67 and appropriate sales or other marketing skills.

68 (j) Upon completion of the pilot program, if it is
69 determined that the project was effective in achieving
70 the objective of assisting participants to establish self-
71 employment sufficient to relinquish public assistance
72 benefits, the department shall implement a similar
73 statewide program for qualified applicants.

74 (k) Effectiveness of the pilot program shall be
75 evaluated by the department in consultation with
76 members of the small business advisory group, technical
77 assistance providers and individual case monitors.

78 (l) If state funding is not secured for this pilot by the
79 first day of July, one thousand nine hundred eighty-
80 seven, the department shall apply for federal waivers
81 and explore other funding sources to implement funding
82 of the pilot program.

CHAPTER 67

(S. B. 487—By Senators Tonkovich, Mr. President, by request, and Harman)

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

AN ACT to amend and reenact section eight, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article six by adding thereto two new sections, designated sections eleven-a and thirty-five, relating to approval of insurance forms by the insurance commissioner; right to return medicare supplement policy, certificate or contract; and mass marketed life and health insurance.

Be it enacted by the Legislature of West Virginia:

That section eight, article six, chapter thirty-three of the

code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article six be further amended by adding thereto two new sections, designated sections eleven-a and thirty-five, to read as follows:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-8. Approval of forms.

§33-6-11a. Right to return medicare supplement policy, certificate or contract.

§33-6-35. Mass marketed life and health insurance.

§33-6-8. Approval of forms.

1 (a) Except as provided in section eight, article
2 seventeen of this chapter (fire and marine forms), no
3 insurance policy form, no group certificate form, no
4 insurance application form where written application is
5 required and is to be made a part of the policy, and no
6 rider, endorsement or other form to be attached to any
7 policy, shall be delivered or issued for delivery in this
8 state by an insurer unless it has been filed with and
9 approved by the commissioner, except that as to group
10 insurance policies delivered outside this state, only the
11 group certificates to be delivered or issued for delivery
12 in this state shall be filed with the commissioner upon
13 his request. This section shall not apply to policies,
14 riders, endorsements or forms of unique character
15 designed for and used with relation to insurance upon
16 a particular subject, or which relate to the manner of
17 distribution of benefits or to the reservation of rights
18 and benefits under life or accident and sickness
19 insurance policies, and are used at the request of the
20 individual policyholder, contract holder or certificate
21 holder, nor to the surety bond forms.

22 (b) Every such filing shall be made not less than
23 thirty days in advance of any such delivery. At the
24 expiration of such thirty days, the form so filed shall be
25 deemed approved unless prior thereto it has been
26 affirmatively approved or disapproved by the commis-
27 sioner. Approval of any such form by the commissioner
28 shall constitute a waiver of any unexpired portion of
29 such waiting period. The commissioner may extend by
30 not more than an additional thirty days the period
31 within which he may so affirmatively approve or

32 disapprove any such form, by giving notice of such
33 extension before expiration of the initial thirty-day
34 period. At the expiration of such period as so extended,
35 and in the absence of such prior affirmative approval
36 or disapproval, any such form shall be deemed ap-
37 proved. The commissioner may at any time, after notice
38 and for cause shown, withdraw any such approval.

39 (c) Any order of the commissioner disapproving any
40 such form or withdrawing a previous approval shall
41 state the grounds therefor.

42 (d) The commissioner may, by order, exempt from the
43 requirements of this section for so long as he deems
44 proper any insurance document or form or type thereof
45 as specified in such order, to which, in his opinion, this
46 section may not practicably be applied, or the filing and
47 approval of which are, in his opinion, not desirable or
48 necessary for the protection of the public.

49 (e) Notwithstanding any other provisions of this
50 section, any mass marketed life and/or health insurance
51 policy offered to members of any association by an
52 association where the primary purpose of such associ-
53 ation is other than the sale of insurance to its members,
54 shall be exempt from the provision requiring prior
55 approval under this section.

56 (f) This section shall apply also to any form used by
57 domestic insurers for delivery in a jurisdiction outside
58 West Virginia, if the insurance supervisory official of
59 such jurisdiction informs the commissioner that such
60 form is not subject to approval or disapproval by such
61 official, and upon the commissioner's order requiring
62 the form to be submitted to him for the purpose. The
63 applicable same standards shall apply to such forms as
64 apply to forms for domestic use.

**§33-6-11a. Right to return medicare supplement policy,
certificate or contract.**

1 Medicare supplement or limited benefit medicare
2 supplement policies, certificates or contracts (as such
3 terms are defined by regulations issued by the commis-
4 sioner) issued to persons eligible for medicare by reason

5 of age, other than those issued pursuant to direct
6 response solicitation, shall have a notice prominently
7 printed on the first page of the policy, certificate or
8 contract, attached thereto stating in substance that the
9 insured person shall have the right to return the policy,
10 and to have the premium refunded if, after examination
11 of the policy, certificate or contract, the insured person
12 is not satisfied for any reason. Policies, certificates or
13 contracts issued pursuant to a direct response solicita-
14 tion to persons eligible for medicare by reason of age
15 shall have a notice prominently printed on the first page
16 or attached thereto, stating in substance that the
17 policyholder, certificate holder or contract holder shall
18 have the right to return the policy, certificate or
19 contract within thirty days of its delivery and to have
20 the premium refunded if after examination the insured
21 person is not satisfied for any reason.

§33-6-35. Mass marketed life and health insurance.

1 (a) No mass marketed life or health insurance includ-
2 ing mass marketed life or health insurance under a
3 group or blanket policy issued outside this state to
4 residents of this state, shall be effected on persons in this
5 state until the commissioner finds that the total charges
6 for the insurance to the persons insured are reasonable
7 in relation to the benefits provided.

8 (1) "Direct response solicitation" means any offer by
9 an insurer to persons in this state, either directly or
10 through a third party, to effect life or health insurance
11 coverage which enables the individual to apply or enroll
12 for the insurance on the basis of the offer. It shall not
13 include solicitations for insurance through an employee
14 benefit plan which is defined in P.L. 90-406, 88 Stat.
15 829, nor shall it include such a solicitation through the
16 individual's creditor with respect to credit life or credit
17 health insurance.

18 (2) "Mass marketed life or health insurance" for
19 purposes of this article, means the insurance under any
20 individual, franchise, group or blanket policy of life or
21 health insurance which is offered by means of direct
22 response solicitation through a sponsoring organization

23 or through mails or other mass communications media
24 and under which the person insured pays all or
25 substantially all of the cost of his or her insurance.

26 (b) Any insurer extending mass marketed life or
27 health insurance under a group or blanket policy issued
28 outside this state to residents of this state shall comply
29 with respect to such insurance with the requirements of
30 this state relating to advertising and to claim settlement
31 practices.

CHAPTER 68

(H. B. 2899—By Delegate McKinley)

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

AN ACT to amend article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen; and to amend article sixteen of said chapter thirty-three by adding thereto a new section, designated section nine, all relating to accident and sickness insurance policies; and providing that no insurer may cancel or nonrenew coverage because of the diagnosis or treatment of acquired immune deficiency syndrome.

Be it enacted by the Legislature of West Virginia:

That article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirteen; and that article sixteen of said chapter thirty-three be amended by adding thereto a new section, designated section nine, all to read as follows:

Article.

15. Accident and Sickness Insurance.

16. Group Accident and Sickness Insurance.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-13. Policies not to terminate coverage because of diagnosis or treatment of acquired immune deficiency syndrome.

1 No insurer may cancel or nonrenew the accident and

- 2 sickness insurance policy of any insured because of
- 3 diagnosis or treatment of acquired immune deficiency
- 4 syndrome.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-9. Policies not to terminate coverage because of diagnosis or treatment of acquired immune deficiency syndrome.

- 1 No insurer may cancel or nonrenew the accident and
- 2 sickness insurance policy of any insured because of
- 3 diagnosis or treatment of acquired immune deficiency
- 4 syndrome.

CHAPTER 69

(Com. Sub. for H. B. 2970—By Delegates Southern and Phillips)

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

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-one, relating to captive insurance; definitions; licensing; authority; names of companies; minimum capital; letter of credit; minimum surplus; letter of credit; formation of captive insurance companies in this state; reports and statements; examinations and investigations; grounds and procedures for suspension or revocation of license; legal investments; reinsurance; rating organizations; memberships; exemption from compulsory associations; tax on premiums collected; rules and regulations; and laws applicable; and by adding a new article designated article thirty-two, relating to the formation and operation of risk retention groups; definitions; risk retention groups chartered in this state; risk retention groups not chartered in this state; taxation; compliance with unfair claims settlement practices law; prohibitive, deceptive, false or fraudulent practices; examination regarding financial condition; notice to purchasers; prohibited acts regarding solicitation or sale; prohibited coverage; delinquency

proceedings; compulsory associations; countersignatures not required; purchasing groups exemption; notice and registration requirements of purchasing groups; restrictions on insurance purchased by purchasing groups; administrative and procedural authority; penalties; duty on agents or brokers to obtain license; binding effect of orders issued in the United States District Court; and rules.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new articles, designated articles thirty-one and thirty-two, to read as follows:

Article.

31. Captive Insurance.

32. Risk Retention Act.

ARTICLE 31. CAPTIVE INSURANCE.

- §33-31-1. Definitions.
- §33-31-2. Licensing; authority.
- §33-31-3. Names of companies.
- §33-31-4. Minimum capital; letter of credit.
- §33-31-5. Minimum surplus; letter of credit.
- §33-31-6. Formation of captive insurance companies in this state.
- §33-31-7. Reports and statements.
- §33-31-8. Examinations and investigations.
- §33-31-9. Grounds and procedures for suspension or revocation of license.
- §33-31-10. Legal investments.
- §33-31-11. Reinsurance.
- §33-31-12. Rating organizations; memberships.
- §33-31-13. Exemption from compulsory associations.
- §33-31-14. Tax on premiums collected.
- §33-31-15. Rules.
- §33-31-16. Laws applicable.

§33-31-1. Definitions.

1 As used in this chapter, unless the context requires
2 otherwise:

3 (1) "Affiliated company" means any company in the
4 same corporate system as a parent, an industrial
5 insured, or a member organization by virtue of common
6 ownership, control, operation or management.

7 (2) "Association" means any legal association of

8 individuals, corporations, partnerships or associations
9 that has been in continuous existence for at least one
10 year, the member organizations of which collectively:

11 (A) Own, control or hold with power to vote all for the
12 outstanding voting securities of an association captive
13 insurance company incorporated as a stock insurer; or

14 (B) Have complete voting control over an association
15 captive insurance company incorporated as a mutual
16 insurer.

17 (3) "Association captive insurance company" means
18 any company that insures risks of the member organ-
19 izations of the association, and their affiliated
20 companies.

21 (4) "Captive insurance company" means any pure
22 captive insurance company, association captive insu-
23 rance company, or industrial insured captive insurance
24 company formed or licensed under the provisions of this
25 chapter.

26 (5) "Commission" means the insurance commission of
27 West Virginia.

28 (6) "Industrial insured" means an insured:

29 (A) Who procures the insurance of any risk or risks
30 by use of the services of a full-time employee acting as
31 an insurance manager or buyer;

32 (B) Whose aggregate annual premiums for insurance
33 on all risks total at least twenty-five thousand dollars;
34 and

35 (C) Who has at least twenty-five full-time employees.

36 (7) "Industrial insured captive insurance company"
37 means any company that insures risks of the industrial
38 insureds that comprise the industrial insured group and
39 their affiliated companies.

40 (8) "Industrial insured group" means any group that
41 meets either of the following criteria:

42 (A) Any group of industrial insureds that collectively:

43 (i) Own, control or hold with power to vote all of the

44 outstanding voting securities of an industrial insured
45 captive insurance company incorporated as a stock
46 insurer; or

47 (ii) Have complete voting control over an industrial
48 insured captive insurance company incorporated as a
49 mutual insurer; or

50 (B) Any group which is created under the Product
51 Liability Risk Retention Act of 1981 (U.S. Public Law
52 97-45) as a corporation or other limited liability
53 association taxable as a stock insurance company or a
54 mutual insurer under the law of the state of West
55 Virginia:

56 (i) Whose primary activity consists of assuming and
57 spreading all, or any portion, of the product liability or
58 completed operations liability risk exposure of its group
59 members;

60 (ii) Which is organized for the primary purpose of
61 conducting the activity described in subdivision (i) of
62 this section;

63 (iii) Which does not exclude any person from member-
64 ship in the group solely to provide for members of such
65 group a competitive advantage over such a person; and

66 (iv) Which is composed of members each of whose
67 principal activity consists of the manufacture, design,
68 importation, distribution, packaging, labeling, lease or
69 sale of a product or products.

70 (9) "Member organization" means any individual,
71 corporation, partnership or association that belongs to
72 an association.

73 (10) "Parent" means a corporation, partnership or
74 individual that directly or indirectly owns, controls, or
75 holds with power to vote more than fifty percent of the
76 outstanding voting securities of a pure captive insurance
77 company.

78 (11) "Pure captive insurance company" means any
79 company that insures risks of its parent and affiliated
80 companies.

§33-31-2. Licensing; authority.

1 (a) Any captive insurance company, when permitted
2 by its articles of association or charter, may apply to the
3 commissioner for a license to do any and all insurance
4 comprised in chapter thirty-three of this code: *Provided,*
5 That said captive insurance company maintains its
6 principal office and principal place of business in this
7 state: *Provided, however,* That:

8 (1) No pure captive insurance company may insure
9 any risks other than those of its parent and affiliated
10 companies;

11 (2) No association captive insurance company may
12 insure any risks other than those of the member
13 organizations of its association, and their affiliated
14 companies;

15 (3) No industrial insured captive insurance company
16 may insure any risks other than those of the industrial
17 insureds that comprise the industrial insured group and
18 their affiliated companies;

19 (4) No captive insurance company may provide
20 personal motor vehicle or homeowner's insurance
21 coverage or any component thereof; and

22 (5) No captive insurance company may accept or cede
23 reinsurance except as provided in section eleven hereof.

24 (b) No captive insurance company may do any insu-
25 rance business in this state unless:

26 (1) It first obtains from the commissioner a license
27 authorizing it to do insurance business in this state;

28 (2) Its board of directors holds at least one meeting
29 each year in this state;

30 (3) It maintains its principal place of business in this
31 state; and

32 (4) It appoints a resident registered agent to accept
33 service of process and to otherwise act on its behalf in
34 this state. Whenever such registered agent cannot with
35 reasonable diligence be found at the registered office of
36 the captive insurance company, the secretary of state

37 shall be an agent of such captive insurance company
38 upon whom any process, notice, or demand may be
39 served.

40 (c) Before receiving a license, a captive insurance
41 company shall file with the commissioner a certified
42 copy of its charter and bylaws, a statement under oath
43 of its president and secretary showing its financial
44 condition, and any other statements or documents
45 required by the commissioner.

46 In addition to the information required above, each
47 applicant captive insurance company shall file with the
48 commissioner evidence of the following:

49 (1) The amount and liquidity of its assets relative to
50 the risks to be assumed;

51 (2) The adequacy of the expertise, experience, and
52 character of the person or persons who will manage it;

53 (3) The overall soundness of its plan of operation;

54 (4) The adequacy of the loss prevention programs of
55 its parent, member organizations, or industrial insureds
56 as applicable; and

57 (5) Such other factors deemed relevant by the com-
58 missioner in ascertaining whether the proposed captive
59 insurance company will be able to meet its policy
60 obligations.

61 (d) Each captive insurance company shall pay to the
62 commissioner a nonrefundable fee of two hundred
63 dollars for examining, investigating, and processing its
64 application for license and upon issuance of a license, an
65 annual license fee of three hundred dollars. In addition,
66 it shall pay fees and charges in accordance with article
67 three of this chapter.

68 (e) If the commissioner is satisfied that the documents
69 and statements that such captive insurance company has
70 filed comply with the provisions of this chapter, he may
71 grant a license authorizing it to do insurance business
72 in this state until April first, thereafter, which license
73 may be renewed.

§33-31-3. Names of companies.

1 No captive insurance company shall adopt a name
2 that is the same, deceptively similar, or likely to be
3 confused with or mistaken for any other existing
4 business name registered in the state of West Virginia.

§33-31-4. Minimum capital; letter of credit.

1 No pure captive insurance company, association
2 captive insurance company incorporated as a stock
3 insurer, or industrial insured captive insurance
4 company incorporated as a stock insurer shall be issued
5 a license unless it shall possess and thereafter maintain
6 unimpaired paid-in capital of:

7 (1) In the case of a pure captive insurance company,
8 not less than one hundred thousand dollars;

9 (2) In the case of an association captive insurance
10 company incorporated as a stock insurer, not less than
11 three hundred twenty thousand dollars; and

12 (3) In the case of an industrial insured captive
13 insurance company incorporated as a stock insurer, not
14 less than one hundred sixty thousand dollars.

15 Such capital may be in the form of cash or an
16 irrevocable letter of credit issued by a bank chartered
17 by the state of West Virginia or a member bank of the
18 federal reserve system and approved by the commis-
19 sioner.

§33-31-5. Minimum surplus; letter of credit.

1 No captive insurance company shall be issued a
2 license unless it shall possess and thereafter maintain
3 free surplus of:

4 (1) In the case of a pure captive insurance company,
5 not less than one hundred fifty thousand dollars;

6 (2) In the case of an association captive insurance
7 company incorporated as a stock insurer, not less than
8 two hundred eighty thousand dollars;

9 (3) In the case of an industrial insured captive
10 insurance company incorporated as a stock insurer, not
11 less than two hundred forty thousand dollars;

12 (4) In the case of an association captive insurance
13 company incorporated as a mutual insurer, not less than
14 six hundred thousand dollars; and

15 (5) In the case of an industrial insured captive
16 insurance company incorporated as a mutual insurer,
17 not less than four hundred thousand dollars.

18 Such surplus may be in the form of cash or an
19 irrevocable letter of credit issued by a bank chartered
20 by the state of West Virginia or member bank of the
21 federal reserve system and approved by the commis-
22 sioner.

**§33-31-6. Formation of captive insurance companies in
this state.**

1 (a) A pure captive insurance company shall be
2 incorporated as a stock insurer with its capital divided
3 into shares and held by the stockholders.

4 (b) An association captive insurance company or an
5 industrial insured captive insurance company may be
6 incorporated:

7 (1) As a stock insurer with its capital divided into
8 shares and held by the stockholders; or

9 (2) As a mutual insurer without capital stock, the
10 governing body of which is elected by the member
11 organizations of its association.

12 (c) A captive insurance company shall have at least
13 one incorporator who shall be a resident of this state.

14 (d) Before the articles of association are transmitted
15 to the secretary of state, the incorporators shall petition
16 the commissioner to issue a certificate setting forth his
17 finding that the establishment and maintenance of the
18 proposed corporation will promote the general good of
19 the state. In arriving at such finding the commissioner
20 shall consider:

21 (1) The character, reputation, financial standing and
22 purpose of the incorporators;

23 (2) The character, reputation, financial responsibility,
24 insurance experience, and business qualifications of the
25 officers and directors; and

26 (3) Such other aspects as the commissioner shall deem
27 advisable.

28 (e) The articles of association, such certificate, and the
29 organization fee shall be transmitted to the secretary of
30 state, who shall thereupon record both the articles of
31 incorporation and the certificate.

32 (f) The capital stock of a captive insurance company
33 incorporated as a stock insurer shall be issued at not less
34 than par value.

35 (g) At least one of the members of the board of
36 directors of a captive insurance company incorporated
37 in this state shall be a resident of this state.

38 (h) Captive insurance companies formed under the
39 provisions of this chapter shall have the privileges and
40 be subject to the provisions of the general corporation
41 law as well as the applicable provisions contained in this
42 chapter. In the event of conflict between the provisions
43 of said general corporation law and the provisions of this
44 chapter, the latter shall control.

§33-31-7. Reports and statements.

1 (a) Captive insurance companies shall not be required
2 to make any annual report except as provided in this
3 chapter.

4 (b) On or before March first of each year, each captive
5 insurance company shall submit to the commissioner a
6 report of its financial condition, verified by oath of two
7 of its executive officers. Each association captive
8 insurance company shall file its report in the form
9 required by section fourteen, article three of this
10 chapter. The commissioner shall by rule propose the
11 form in which pure captive insurance companies and
12 industrial insured captive insurance companies shall
13 report.

§33-31-8. Examinations and investigations.

1 At least once in three years, and whenever the
2 commissioner determines it to be prudent, he shall
3 personally, or by some competent person appointed by
4 him, visit each captive insurance company and tho-
5 roughly inspect and examine its affairs to ascertain its
6 financial condition, its ability to fulfill its obligations
7 and whether it has complied with the provisions of this
8 chapter. The commissioner upon application, in his
9 discretion, may extend the aforesaid three-year period
10 to five years, provided said captive insurance company
11 is subject to a comprehensive annual audit during such
12 period of a scope satisfactory to the commissioner by
13 independent auditors approved by him. The expenses
14 and charges of the examination shall be paid to the state
15 by the company or companies examined and the finance
16 director shall issue his warrants for the proper charges
17 incurred in all examinations.

§33-31-9. Grounds and procedures for suspension or revocation of license.

1 (a) The license of a captive insurance company to do
2 any insurance business in this state may be suspended
3 or revoked by the commissioner for any of the following
4 reasons:

- 5 (1) Insolvency or impairment of capital or surplus;
- 6 (2) Failure to meet the requirements of section four
7 or five of this article;
- 8 (3) Refusal or failure to submit an annual report, as
9 required by section seven of this article, or any other
10 report or statement required by law or by lawful order
11 of the commissioner;
- 12 (4) Failure to comply with the provisions of its own
13 charter or bylaws;
- 14 (5) Failure to submit to examination or any legal
15 obligation relative thereto, as required by section eight
16 of this article;
- 17 (6) Refusal or failure to pay the cost of examination
18 as required by section eight of this article;

19 (7) Use of methods that, although not otherwise
20 specifically prohibited by law, nevertheless render its
21 operation detrimental or its condition unsound with
22 respect to the public or to its policyholders; or

23 (8) Failure otherwise to comply with the laws of this
24 state.

25 (b) If the commissioner finds, upon examination,
26 hearing or other evidence, that any captive insurance
27 company has committed any of the acts specified in
28 subsection (a), he may suspend or revoke such license if
29 he deems it in the best interest of the public and the
30 policyholders of such captive insurance company,
31 notwithstanding any other provision of this title.

§33-31-10. Legal investments.

1 (a) An association captive insurance company shall
2 comply with the investment requirements of the
3 commissioner.

4 (b) No pure captive insurance company or industrial
5 insured captive insurance company may be subject to
6 any restrictions on allowable investments whatever. The
7 commissioner may, however, prohibit or limit any
8 investment that threatens the solvency or liquidity of
9 any such company.

§33-31-11. Reinsurance.

1 (a) Any captive insurance company may provide
2 reinsurance, as required in section fifteen, article four
3 of this chapter, on risks ceded by any other insurer.

4 (b) Any captive insurance company may take credit
5 for reserves on risks ceded to a reinsurer: *Provided,*
6 That no captive insurance company may reinsure a risk
7 or part thereof with reinsurers not complying with the
8 provisions of section seventeen, article four of this
9 chapter.

§33-31-12. Rating organizations; memberships.

1 No captive insurance company may be required to join
2 a rating organization.

§33-31-13. Exemption from compulsory associations.

1 No captive insurance company may be permitted to
2 join or contribute financially to any plan, pool, associ-
3 ation or guaranty or insolvency fund in this state, nor
4 any captive insurance company, or its insured, or its
5 parent or any affiliated company, or any member
6 organization of its association, receive any benefit from
7 any such plan, pool, association or guaranty or insol-
8 vency fund for claims arising out of the operations of
9 such captive insurance company.

§33-31-14. Tax on premiums collected.

1 (a) Each captive insurance company shall pay to the
2 commissioner, in the month of February of each year,
3 a tax at the rate of five tenths of one percent on the gross
4 amount of all premiums collected or contracted for on
5 policies or contracts of insurance covering property or
6 risks in this state and on risks and property situated
7 elsewhere upon which no premium tax is otherwise paid
8 during the year ending December thirty-first, next
9 preceding, after deducting from the gross amount of
10 premiums, subject to the tax, the amount received as
11 reinsurance premiums on business in the state and the
12 amount paid to policyholders as return premiums which
13 shall include dividends on unabsorbed premiums or
14 premium deposits returned or credited to policyholders.

15 (b) The tax provided for in this section shall constitute
16 all taxes collectible under the laws of this state from any
17 captive insurance company, and no other premium tax
18 or other taxes shall be levied or collected from any
19 captive insurance company by the state or any county,
20 city or municipality within this state, except ad valorem
21 taxes.

§33-31-15. Rules.

1 The commissioner may establish rules and from time
2 to time amend such rules relating to captive insurance
3 companies as are necessary to enable him to carry out
4 the provisions of this chapter.

§33-31-16. Laws applicable.

1 No provisions of this code, other than those contained
2 in this chapter or contained in specific references

3 contained in this chapter, may apply to captive insu-
4 rance companies.

ARTICLE 32. RISK RETENTION ACT.

- §33-32-1. Purpose and short title.
- §33-32-2. Definitions.
- §33-32-3. Risk retention groups chartered in this state.
- §33-32-4. Risk retention groups not chartered in this state.
- §33-32-5. Tax on premiums collected.
- §33-32-6. Compliance with unfair claims settlement practices law.
- §33-32-7. Prohibitive, deceptive, false, or fraudulent practices.
- §33-32-8. Examination regarding financial condition.
- §33-32-9. Notice to purchasers.
- §33-32-10. Prohibited acts regarding solicitation or sale.
- §33-32-11. Prohibition on ownership by an insurance company.
- §33-32-12. Prohibited coverage.
- §33-32-13. Delinquency proceedings.
- §33-32-14. Compulsory associations.
- §33-32-15. Countersignatures not required.
- §33-32-16. Purchasing groups; exemption from certain laws relating to the group purchase of insurance.
- §33-32-17. Notice and registration requirements of purchasing groups.
- §33-32-18. Restrictions on insurance purchased by purchasing groups.
- §33-32-19. Administrative and procedural authority regarding risk retention groups and purchasing groups.
- §33-32-20. Penalties.
- §33-32-21. Duty on agents or brokers to obtain license.
- §33-32-22. Binding effect of orders issued in United States district court.
- §33-32-23. Rules.

§33-32-1. Purpose and short title.

1 The purpose of this act is to regulate the formation
2 and operation of risk retention groups in this state
3 formed pursuant to the provisions of the federal liability
4 risk retention act of 1986, hereinafter referred to as
5 "RRA 1986". This article may be referred to as the Risk
6 Retention Act of West Virginia.

§33-32-2. Definitions.

1 As used in this article, the term:

2 (a) "Commissioner" means the insurance commis-
3 sioner of the State of West Virginia or the commissioner,
4 director or superintendent of insurance in any other
5 state.

6 (b) "Completed operations liability" means liability

7 arising out of the installation, maintenance, or repair of
8 any product at a site which is now owned or controlled
9 by:

10 (1) Any person who performs that work; or

11 (2) Any person who hires an independent contractor
12 to perform that work; but shall include liability for
13 activities which are completed or abandoned before the
14 date of the occurrence giving rise to the liability.

15 (c) "Domicile" for purposes of determining the state
16 in which a purchasing group is domiciled, means:

17 (1) For a corporation, the state in which the purchas-
18 ing group is incorporated; and

19 (2) For an unincorporated entity, the state of its
20 principal place of business.

21 (d) "Hazardous financial condition" means that, based
22 on its present or reasonably anticipated financial
23 condition, a risk retention group, although not yet
24 financially impaired or insolvent, is unlikely to be able:

25 (1) To meet obligations to policyholders with respect
26 to known claims and reasonably anticipated claims; or

27 (2) To pay other obligations in the normal course of
28 business;

29 (e) "Insurance" means primary insurance, excess
30 insurance, reinsurance, surplus lines insurance, and any
31 other arrangement for shifting and distributing risk
32 which is determined to be insurance under the laws of
33 this state.

34 (f) "Liability" means legal liability for damages
35 (including costs of defense, legal costs and fees, and
36 other claims expenses) because of injuries to other
37 persons, damage to their property, or other damage or
38 loss to such other persons resulting from or arising out
39 of:

40 (1) Any business (whether profit or nonprofit), trade,
41 product, services (including professional services),
42 premises, or operations;

43 (2) Any activity of any state or local government, or
44 any agency or political subdivision thereof; or

45 (3) Does not include personal risk liability and an
46 employer's liability with respect to its employees other
47 than legal liability under the Federal Employers'
48 Liability Act.

49 (g) "Personal risk liability" means liability for
50 damages because of injury to any person, damage to
51 property, or other loss or damage resulting from any
52 personal, familial, or household responsibilities or
53 activities, rather than from responsibilities or activities
54 referred to herein;

55 (h) "Plan of operation" or a "feasibility study" means
56 an analysis which presents the expected activities and
57 results of a risk retention group including at a
58 minimum:

59 (1) The coverages, deductibles, coverage limits, rates,
60 and rating classification systems for each line of
61 insurance the group intends to offer;

62 (2) Historical and expected loss experience of the
63 proposed members and national experience of similar
64 exposures to the extent that this experience is reason-
65 ably available;

66 (3) Pro forma financial statements and projections;

67 (4) Appropriate opinions by a qualified, independent
68 casualty actuary, including a determination of min-
69 imum premium or participation levels required to
70 commence operations and to prevent a hazardous
71 financial condition;

72 (5) Identification of management, underwriting
73 procedures, managerial oversight methods, investment
74 policies; and

75 (6) Such other matters as may be prescribed by the
76 commissioner for liability insurance companies autho-
77 rized by the insurance laws of the state in which the risk
78 retention group is chartered.

79 (i) "Product liability" means liability for damages

80 because of any personal injury, death, emotional harm,
81 consequential economic damage, or property damage
82 (including damages resulting from the loss of use of
83 property) arising out of the manufacture, design,
84 importation, distribution, packaging, labeling, lease, or
85 sale of a product, but does not include the liability of
86 any person for those damages if the product involved
87 was in the possession of such a person when the incident
88 giving rise to the claim occurred.

89 (j) "Purchasing group" means any group which:

90 (1) Has as one of its purposes the purchase of liability
91 insurance on a group basis;

92 (2) Purchases such insurance only for its group
93 members and only to cover their similar or related
94 liability exposure, as described in subparagraph (3);

95 (3) Is composed of members whose businesses or
96 activities are similar or related with respect to the
97 liability to which members are exposed by virtue of any
98 related, similar, or common business, trade, product,
99 services, premises, or operations; and

100 (4) Is domiciled in any state.

101 (k) "Risk retention group" means any corporation or
102 other limited liability association formed under the laws
103 of any state:

104 (1) Whose primary activity consists of assuming and
105 spreading all, or any portion, of the liability exposure
106 of its group members;

107 (2) Which is organized for the primary purpose of
108 conducting the activity described under subparagraph
109 (1);

110 (3) Which: (i) is chartered and licensed as a liability
111 insurance company and authorized to engage in the
112 business of insurance under the laws of any state; or (ii)
113 before the first day of January, one thousand nine
114 hundred eighty-eight, was chartered or licensed and
115 authorized to engage in the business of insurance under
116 the laws of this state, and, before such date, had
117 certified to the insurance commissioner of at least one

118 state that it satisfied the capitalization requirements of
119 such state, except that any such group shall be consi-
120 dered to be a risk retention group only if it has been
121 engaged in business continuously since such date and
122 only for the purpose of continuing to provide insurance
123 to cover product liability or completed operations
124 liability as such terms were defined in the product
125 liability risk retention act of 1986 before the date of the
126 enactment of the risk retention act of 1986;

127 (4) Which does not exclude any person from member-
128 ship in the group solely to provide for members of such
129 a group a competitive advantage over such a person;

130 (5) Which has as its members only persons who have
131 an ownership interest in the group and which has as its
132 owners only persons who are members who are provided
133 insurance by the risk retention group:

134 (A) Has as its sole owner an organization which is
135 owned by persons who are provided insurance by the
136 risk retention group.

137 (6) Whose members are engaged in businesses or
138 activities similar or related with respect to the liability
139 of which such members are exposed by virtue of any
140 related, similar, or common business trade, product,
141 services, premises, or operations;

142 (7) Whose activities do not include the provision of
143 insurance other than:

144 (A) Liability insurance for assuming and spreading
145 all or any portion of the liability of its group members;
146 and

147 (B) Reinsurance with respect to the liability of any
148 other risk retention group or any members of such other
149 group which is engaged in businesses or activities so
150 that such group or member meets the reinsurance
151 requirement set forth herein, from membership in the
152 risk retention group which provides such reinsurance;
153 and

154 (8) The name of which includes the phrase "Risk
155 Retention Group".

156 (l) "State" means any state of the United States or the
157 District of Columbia.

§33-32-3. Risk retention groups chartered in this state.

1 A risk retention group seeking to be chartered in this
2 state must be chartered and licensed as a liability
3 insurance company authorized by the insurance laws of
4 this state and, except as provided elsewhere in this
5 article, must comply with all of the laws, rules,
6 regulations and requirements applicable to such
7 insurers chartered and licensed in this state and with
8 section 4 of this article to the extent such requirements
9 are not a limitation on laws, rules, regulations or
10 requirements of this state. Before it may offer insurance
11 in any state, each risk retention group shall also submit
12 for approval to the insurance commissioner of this state
13 a plan of operation or a feasibility study and revisions
14 of such plan or study if the group intends to offer any
15 additional lines of liability insurance.

**§33-32-4. Risk retention groups not chartered in this
state.**

1 Risk retention groups chartered in states other than
2 this state and seeking to do business as a risk retention
3 group in this state must observe and abide by the laws
4 of this state as follows:

5 (A) *Notice of operations and designation of commis-*
6 *sioner as agent.*

7 (a) Before offering insurance in this state, a risk
8 retention group shall submit to the commissioner:

9 (1) A statement identifying the state or states in
10 which the risk retention group is chartered and licensed
11 as a liability insurance company, date of chartering, its
12 principal place of business, and such other information
13 including information on its membership, as the
14 commissioner of this state may require to verify that the
15 risk retention group is qualified under this article;

16 (2) A copy of its plan of operations or a feasibility
17 study and revisions of such plan or study submitted to
18 its state of domicile: *Provided, however, That the*

19 provision relating to the submission of a plan of
20 operation or a feasibility study shall not apply with
21 respect to any line or classification of liability insurance
22 which (a) was defined in the federal product liability
23 risk retention act of 1981 before the twenty-seventh day
24 of October, one thousand nine hundred eighty-six and (b)
25 was offered before such date by any risk retention group
26 which had been chartered and operating for not less
27 than three years before such date; and

28 (3) A statement of registration which designates the
29 commissioner as its agent for the purpose of receiving
30 service of legal documents or process.

31 (B) *Financial condition.*

32 Any risk retention group doing business in this state
33 shall submit to the commissioner:

34 (1) A copy of the group's financial statement submit-
35 ted to its state of domicile, which shall be certified by
36 an independent public accountant and contain a state-
37 ment of opinion on loss and loss adjustment expense
38 reserves made by a member of the American academy
39 of actuaries or a qualified loss reserve specialist (under
40 criteria established by the national association of
41 insurance commissioners);

42 (2) A copy of each examination of the risk retention
43 group as certified by the commissioner or public official
44 conducting the examination;

45 (3) Upon request by the commissioner, a copy of any
46 audit performed with respect to the risk retention
47 group; and

48 (4) Such information as may be required to verify its
49 continuing qualification as a risk retention group under
50 this article.

§33-32-5. Tax on premiums collected.

1 (a) Each risk retention group shall be subject to the
2 same interests, fines and penalties for non-payment as
3 that generally applicable to insurers under article three,
4 chapter thirty-three of this code: *Provided*, That the
5 premium tax or other taxes on each risk retention group

6 shall be in accordance with the provisions of this section.
7 Each risk retention group insurance company shall pay
8 to the commissioner, in the month of February of each
9 year, a tax at the rate of three quarters of one percent
10 on the gross amount of all premiums collected or
11 contracted for on policies or contracts of insurance
12 covering property or risks in this state and on risks and
13 property situated elsewhere upon which no premium tax
14 is otherwise paid during the year ending December 31
15 next preceding, after deducting from the gross amount
16 of premiums subject to the tax the amount received as
17 reinsurance premiums on business in the state and the
18 amount paid to policyholders as return premiums which
19 shall include dividends on unabsorbed premiums or
20 premium deposits returned or credited to policyholders:
21 *Provided, however,* That the three quarters of one
22 percent premium tax provided for herein shall be
23 waived for a period of five years and thereafter be
24 applicable at a reduced rate of one-half of one percent
25 on the gross amount of premiums provided for herein-
26 above, if the said risk retention groups makes a
27 minimum qualified investment of two million dollars in
28 the state of West Virginia during the five year waiver
29 period, as a direct result thereof and the tax commis-
30 sioner so certifies.

31 (b) The tax provided for in this section shall constitute
32 all taxes collectible under the laws of this state from any
33 risk retention group, and no other premium tax or other
34 taxes shall be levied or collected from any risk retention
35 group by the state or any county, city or municipality
36 within this state, except ad valorem taxes

37 (c) To the extent agents or brokers are utilized, they
38 shall report and pay the taxes for the premiums for
39 risks which they have placed with or on behalf of a risk
40 retention group not chartered in this state.

41 (d) To the extent agents or brokers are not utilized or
42 fail to pay the subject tax, or taxes, each risk retention
43 group shall pay the subject tax or taxes, risks insured
44 within the state. Further, each risk retention group
45 shall report all premiums paid to it for risks insured
46 within the state.

§33-32-6. Compliance with unfair claims settlement practices law.

1 Any risk retention group, its agents and representa-
2 tives, shall comply with the laws of this state, as set
3 forth in chapter thirty-three of this code, regarding
4 unfair claims settlement practices act of this state.

§33-32-7. Prohibitive, deceptive, false, or fraudulent practices.

1 Any risk retention group shall comply with the laws
2 of this state, as provided in chapter thirty-three of this
3 code, regarding prohibitive, deceptive, false or fraudu-
4 lent acts or practices. However, if the commissioner
5 seeks an injunction regarding such conduct, the injunc-
6 tion must be obtained from a court of competent
7 jurisdiction.

§33-32-8. Examination regarding financial condition.

1 Any risk retention group must submit to an exami-
2 nation by the commissioner to determine its financial
3 condition if the commissioner of the jurisdiction in
4 which the group is chartered has not initiated an
5 examination or does not initiate an examination within
6 sixty days after a request by the commissioner of this
7 state. Any such examination shall be coordinated to
8 avoid unjustified repetition and conducted in an
9 expeditious manner.

§33-32-9. Notice to purchasers.

1 Any policy issued by a risk retention group shall
2 contain in ten-point type on the front page and the
3 declaration page, the following notice:

4 **NOTICE**

5 This policy is issued by your risk retention group.
6 Your risk retention group may not be subject to all of
7 the insurance laws and regulations of your state. State
8 insurance insolvency guaranty funds are not available
9 for your risk retention group.

§33-32-10. Prohibited acts regarding solicitation or sale.

1 The following acts by a risk retention group are
2 hereby prohibited:

3 (1) The solicitation or sale of insurance by a risk
4 retention group to any person who is not eligible for
5 membership in such group; and

6 (2) The solicitation or sale of insurance by, or oper-
7 ation of, a risk retention group that is in a hazardous
8 financial condition or is financially impaired.

§33-32-11. Prohibition on ownership by an insurance company.

1 No risk retention group shall be allowed to do business
2 in this state if an insurance company is directly or
3 indirectly a member or owner of such risk retention
4 group, other than in the case of a risk retention group
5 all of whose members are insurance companies.

§33-32-12. Prohibited coverage.

1 No risk retention group may offer insurance policy
2 coverage prohibited by chapter thirty-three of this code
3 or ruled unlawful by the highest court of this state.

§33-32-13. Delinquency proceedings.

1 A risk retention group not chartered in this state and
2 doing business in this state must comply with a lawful
3 order issued in a voluntary dissolution proceeding or in
4 a delinquency proceeding commenced by a state insu-
5 rance commissioner if there has been a finding of
6 financial impairment after an examination under
7 section four of this article.

§33-32-14. Compulsory associations.

1 No risk retention group shall be permitted to join or
2 contribute financially to any insurance insolvency
3 guaranty fund, or similar mechanism, in this state, nor
4 shall any risk retention group, or its insureds, receive
5 any benefit from any such fund for claims arising out
6 of the operations of such risk retention group.

§33-32-15. Countersignatures not required.

1 A policy of insurance issued to a risk retention group
2 or any member of that group shall not be required to
3 be countersigned.

§33-32-16. Purchasing groups; exemption from certain laws relating to the group purchase of insurance.

1 Any purchasing group meeting the criteria estab-
2 lished under the provisions of the federal Liability Risk
3 Retention Act of 1986 shall be exempt from any law of
4 this state relating to the creation of groups for the
5 purchase of insurance, prohibition of group purchasing
6 or any law that would discriminate against a purchasing
7 group or its members. In addition, an insurer shall be
8 exempt from any law of this state which prohibits
9 providing, or offering to provide, to a purchasing group
10 or its members advantages based on their loss and
11 expense experience not afforded to other persons with
12 respect to rates, policy forms, coverages or other
13 matters. A purchasing group shall be subject to all other
14 applicable laws of this state.

§33-32-17. Notice and registration requirements of purchasing groups.

1 (a) A purchasing group which intends to do business
2 in this state shall furnish notice to the commissioner
3 which shall:

4 (1) Identify the state in which the group is domiciled;

5 (2) Specify the lines and classifications of liability
6 insurance which the purchasing group intends to
7 purchase;

8 (3) Identify the insurance company from which the
9 group intends to purchase its insurance and the domicile
10 of such company;

11 (4) Identify the principal place of business of the
12 groups; and

13 (5) Provide such other information as may be re-
14 quired by the commissioner to verify that the purchas-
15 ing group is qualified under this article.

16 (b) The purchasing group shall register with and
17 designate the commissioner (or other appropriate

18 authority) as its agent solely for the purpose of receiving
19 service of legal documents or process, except that such
20 requirements shall not apply in the case of a purchasing
21 group which:

22 (1) Was domiciled before the first day of April, one
23 thousand nine hundred eighty-six;

24 (2) Is domiciled on and after the second day of
25 October, one thousand nine hundred eighty-six in any
26 state of the United States which:

27 (i) Before the twenty-seventh day of October, one
28 thousand nine hundred eighty-six purchased insurance
29 from an insurance carrier licensed in any state; and

30 (ii) Since the twenty-seventh day of October, one
31 thousand nine hundred eighty-six, purchased its insu-
32 rance from an insurance carrier licensed in any state;

33 (3) Which was a purchasing group under the require-
34 ments of the product liability risk retention act of 1981
35 before the twenty-seventh day of October, one thousand
36 nine hundred eighty-six; and

37 (4) Which does not purchase insurance that was not
38 authorized for purposes of an exemption under that Act,
39 as in effect before the twenty-seventh day of October,
40 one thousand nine hundred eighty-six.

§33-32-18. Restrictions on insurance purchased by purchasing groups.

1 A purchasing group may not purchase insurance from
2 a risk retention group that is not chartered in a state
3 or from an insurer not admitted in the state in which
4 the purchasing group is located, unless the purchase is
5 effected through a licensed agent or broker acting
6 pursuant to the surplus lines laws and regulations of
7 such state.

§33-32-19. Administrative and procedural authority regarding risk retention groups and purchasing groups.

1 The commissioner is authorized to make use of any of
2 the powers established under chapter thirty-three of this

3 code to enforce the laws of this state so long as those
4 powers are not specifically preempted by the national
5 product liability risk retention act of 1981, as amended
6 by the risk retention amendments of 1986. This includes,
7 but is not limited to, the commissioner's administrative
8 authority to investigate, issue subpoenas, conduct
9 depositions and hearings, issue orders, and impose
10 penalties. With regard to any investigation, administra-
11 tive proceedings, or litigation, the commissioner can rely
12 on the procedural law and regulations of the state. The
13 injunctive authority of the commissioner in regard to
14 risk retention groups is restricted by the requirement
15 that any injunction be issued by a court of competent
16 jurisdiction.

§33-32-20. Penalties.

1 A risk retention group which violates any provision of
2 this Act will be subject to fines and penalties applicable
3 to licensed insurers generally, including revocation of its
4 license and/or the right to do business in this state.

§33-32-21. Duty on agents or brokers to obtain license.

1 Any person acting, or offering to act, as an agent or
2 broker for a risk retention group or purchasing group,
3 which solicits members, sells insurance coverage,
4 purchases coverage for its members located within the
5 state or otherwise does business in this state shall, before
6 commencing any such activity, obtain a license from the
7 commissioner.

§33-32-22. Binding effect of orders issued in United States district court.

1 An order issued by any district court of the United
2 States enjoining a risk retention group from soliciting
3 or selling insurance, or operating, in any state (or in all
4 states or in any territory or possession of the United
5 States) upon a finding that such a group is in a
6 hazardous financial condition shall be enforceable in the
7 courts of the state.

§33-32-23. Rules.

1 The commissioner may establish and from time to

- 2 time amend such rules relating to risk retention groups
- 3 as may be necessary or desirable to carry out the
- 4 provisions of this article.

CHAPTER 70

(Com. Sub. for H. B. 2255—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

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

AN ACT to repeal section six-c, article nine, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four, five, six, six-b, eight and sixteen of said article nine; and to further amend said article nine by adding thereto two new sections, designated sections one-a and one-b, all relating to the judges' retirement system; providing for the definition of certain terms relating thereto; providing a statement of legislative intent, policy and findings with respect to certain decisions of the West Virginia supreme court of appeals with respect to the expansion of eligibility for and payments of benefits under such system; declaring the necessity of certain legislative amendments having retrospective and prospective application in such retirement system and a statement of compelling state interest in the preservation of legislative constitutional powers and responsibilities to legislate and to establish judicial compensation and preserving the financial integrity of the system; enlarging permissible investments for fund moneys; reaffirming that state auditor be primary fiscal officer and administrator of judges' retirement system with required independent review and final determination by the state auditor with respect to eligibility for and amount of benefit payments; directing the state auditor to refund certain moneys, with interest, in respect of payments made to acquire service pursuant to certain decisions of the West Virginia supreme court of appeals; requiring contributions be made so long as members of the system sit as

judges, irrespective of whether or not such persons would otherwise qualify for benefits under said article; providing for credits toward eligibility; granting certain credits for military service without requiring payment therefor; granting certain credits for services as prosecuting attorney in certain cases, requiring payment therefor and establishing the rate of such payment; providing for the transfer of credits between the judges' retirement system and the public employees retirement system; limiting the use of the same retirement credits in both systems; deleting obsolete provisions; including any required payments by county commissions into judges' retirement system trust fund; specifying military service credits allowable up to five years maximum; allowing retirement at earlier age through use of actuarially reduced percentage for pension benefit determination, receivable throughout retirement; providing for increase in retirement benefits due to increases in judicial salaries occurring during retirement; authorizing state auditor to determine reasonable rate of interest for judicial members acquiring service credit periods and payments therefor; providing for spousal annuities to be payable from all trust fund moneys, including appropriations made thereto; establishing certain benefits for surviving orphans of judges in certain cases; establishing certain new criteria for eligibility for receipt of retirement benefits by judges; requiring of minimum of twelve years actual service as a judge as a condition of eligibility of benefits; providing for shorter service period for entitlement to disability retirement for judges; revising disability retirement benefit applicable to new judge members retiring upon disability subsequent to specified date; specifying certain effective dates; and providing for severability of the provisions of said article and of the amendments thereto.

Be it enacted by the Legislature of West Virginia:

That section six-c, article nine, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three, four, five, six, six-b, eight and sixteen of said article nine, as amended, be

amended and reenacted; and that said article nine be further amended by adding thereto two new sections, designated sections one-a and one-b, all to read as follows:

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURT OF RECORD.

- §51-9-1a. Definitions.
- §51-9-1b. Statement of legislative intent, policy and finding.
- §51-9-3. Custody, permissible investment and administration of retirement system trust fund; state auditor's authority as administrator and trust fund fiduciary; refunds required, including interest.
- §51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; military service credit and maximum allowable.
- §51-9-5. Election not to participate, contribute, or be a member; authorized transfers of service credit by a judge; duplicate use of service credit prohibited.
- §51-9-6. Eligibility for and payment of benefits.
- §51-9-6b. Annuities for surviving spouses and surviving dependent children of judges; automatic escalation and increase of annuity benefit; proration designation by judge permitted.
- §51-9-8. Retirement upon disability.
- §51-9-16. Severability of article and amendments thereto.

§51-9-1a. Definitions.

- 1 As used in this article the term "judge" or "judge of
- 2 any court of record" or "judge of any court of record of
- 3 this state" shall mean, refer to and include judges of the
- 4 several circuit courts and justices of the supreme court
- 5 of appeals.

§51-9-1b. Statement of legislative intent, policy and finding.

- 1 The decision and opinion of the state supreme court
- 2 of appeals in the case of *In re Judge Dostert*, which was
- 3 rendered on the seventh day of November, in the year
- 4 one thousand nine hundred eighty-four, and other
- 5 decisions and opinions of that court based upon the
- 6 *Dostert* decision have served to make substantial and
- 7 fundamental changes in the retirement system for
- 8 judges as established by the Legislature under the
- 9 provisions of this article. These substantial and funda-
- 10 mental changes have served to or resulted in (i)
- 11 expanding and greatly easing the requirements neces-
- 12 sary to qualify to receive retirement annuity benefits

13 from the system, (ii) making many persons eligible for
14 retirement annuity benefits from the system at an
15 earlier date than would have been the case under the
16 provisions of the article, (iii) unjustly increasing the
17 amount of retirement annuity benefits to be received by
18 certain judges or justices would or will receive and (iv)
19 altering or reducing the authority of the state auditor
20 as the primary administrator of the judges retirement
21 fund and of the Governor to determine the eligibility of
22 persons seeking to claim retirement annuity benefits
23 from the fund and placed these functions within the
24 province of the court administrator; thus removing the
25 statutory authority of public officers outside the judicial
26 branch of state government to determine the eligibility
27 of judges and justices to receive such benefits or to see
28 to the financial stability and soundness of the fund or
29 to ensure fiscal accountability with respect thereto.

30 The Legislature hereby declares that the *Dostert*
31 decision and the subsequent decisions of the supreme
32 court of appeals which were based upon the *Dostert*
33 decision were not and do not constitute sound legal
34 principles, in that they have served to rewrite contrac-
35 tual arrangements found to exist by the supreme court
36 of appeals in the case of *Wagoner v. Gainer* decided on
37 the fifteenth day of June, one thousand nine hundred
38 eighty-one, and, further, usurped the authority of the
39 Legislature to determine or formulate the public policy
40 of this state as required by article V, section 1 and
41 article VI, section 1 of the Constitution of West Virginia
42 and further usurped the authority of the Legislature to
43 set judicial compensation.

44 The Legislature hereby states and finds that its intent
45 and policy recognizes a compelling state interest is
46 present in carrying out its constitutional responsibilities
47 of establishing, determining and setting reasonable
48 compensation guidelines and amounts for judicial
49 officers, by law, and of protecting the fiscal responsibil-
50 ity and soundness of the moneys required for payment
51 into the trust fund, as a part of the judicial branch
52 budget request, which is determined by benefits payable
53 from the judicial retirement system, and which judicial

54 budget request may not be reduced by the Legislature,
55 constitutionally.

56 The amendments now made to the provisions of this
57 retirement system by the Legislature are made within
58 the original and continuing framework of such system
59 and with the benefits hereunder being directed toward
60 those meeting the strict and fundamental requirements
61 of career judicial service on the bench, of military
62 service and service as a prosecuting attorney as granted
63 by this article.

§51-9-3. Custody, permissible investment and administration of retirement system trust fund; state auditor's authority as administrator and trust fund fiduciary; refunds required, including interest.

1 The state treasurer shall be the custodian of the fund
2 and of any investment securities of the retirement
3 system and shall give a separate and additional bond for
4 the faithful performance of his or her duties as such
5 custodian. The governor shall fix the amount of such
6 bond which shall be approved as to sufficiency and form
7 by the attorney general and shall be filed in the office
8 of the secretary of state. The premium on such bond
9 shall be paid from the fund.

10 In a manner and to an extent consonant with sound
11 administrative principles, the state board of investments
12 shall have authority to invest such fund in interest-
13 bearing securities of the United States of America, of
14 the state of West Virginia and of any political subdivi-
15 sion thereof or such other investments as may be
16 authorized or permitted by the provisions of article six,
17 chapter twelve of this code.

18 The state auditor shall be the primary fiscal officer,
19 responsible for the records and administration of the
20 trust fund, including budgetary matters incident to the
21 authority vested in him or her with respect to judicial
22 department appropriations under article VI, section 51
23 of the Constitution of West Virginia. The state auditor
24 shall also, as trust fund fiduciary, independently
25 determine anew, in a substantive sense and as a check

26 and balance, any information concerning eligible service
27 years, required money contributions, computation of
28 judge's retirement benefit or spousal benefit or any
29 other substantive element of qualification supplied or
30 certified to the state auditor by any other public officer,
31 including the supreme court administrator or the chief
32 executive, toward proper final review before issuance of
33 a state warrant in payment of any benefit under the
34 judges' retirement system.

35 In respect of any credited service heretofore acquired
36 under the *Dostert* decision and subsequent related
37 decisions, the state auditor shall make refund to any
38 person heretofore making payment to acquire such
39 service credit, primary or derivative, in the amount so
40 earlier paid, together with interest at the same rate such
41 sum actually earned because of its investment by the
42 auditor or treasurer, as the case may be, in the
43 consolidated pension pool or with the interest such sum
44 would have earned if timely invested in such pool,
45 whichever amount of interest be greater.

§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; military service credit and maximum allowable; qualifiable prosecutorial service.

1 Every person who is now serving or shall hereafter
2 serve as a judge of any court of record of this state shall
3 pay into the judges' retirement fund six percent of the
4 salary received by such person out of the state treasury:
5 *Provided*, That when a judge becomes eligible to receive
6 benefits from such trust fund by actual retirement, no
7 further payment by him or her shall be required, since
8 such employee contribution, in an equal treatment sense,
9 ceases to be required in the other retirement systems of
10 the state, also, only after actual retirement. Any prior
11 occurrence or practice to the contrary, in any way
12 allowing discontinuance of required employee contribu-
13 tions prior to actual retirement under this retirement
14 system, is rejected as erroneous and contrary to
15 legislative intent, and as violative of required equal
16 treatment and is hereby nullified and discontinued fully,

17 with the state auditor to require such contribution in
18 every instance hereafter, except where no contributions
19 are required to be made any of the provisions of this
20 article.

21 In drawing warrants for the salary checks of judges,
22 the state auditor shall deduct from the amount of each
23 such salary check six percent thereof, which amount so
24 deducted shall be credited by the state treasurer to the
25 trust fund.

26 Any judge seeking to qualify military service to be
27 claimed as credited service, in allowable aggregate
28 maximum amount up to five years, shall be entitled to
29 be awarded the same without any required payment in
30 respect thereof to the judges' retirement fund. Any
31 judge holding office as such on the effective date of the
32 amendments to this article adopted by the Legislature
33 at its regular session in the year one thousand nine
34 hundred eighty-seven, who seeks to qualify service as a
35 prosecuting attorney as credited service, which service
36 credit must have been earned prior to the year one
37 thousand nine hundred eighty-seven, shall be required
38 to pay into the judges' retirement fund six percent of
39 the annual salary which was actually received by such
40 person as prosecuting attorney during the time such
41 prosecutorial service was rendered prior to the year one
42 thousand nine hundred eighty-seven, and for which
43 credited service is being sought, together with applica-
44 ble interest. No judge whose term of office shall
45 commence after the effective date of such amendments
46 to this article, shall be eligible to claim any credit for
47 service rendered as a prosecuting attorney as eligible
48 service for retirement benefits under this article, nor
49 shall any time served as a prosecutor after the year one
50 thousand nine hundred eighty-eight, be considered as
51 eligible service for any purposes of this article.

§51-9-5. Election not to participate, contribute, or be a member; authorized transfers of service credit by a judge; duplicate use of service credit prohibited.

1 (a) Notwithstanding any provisions of this article, any

2 judge may in writing notify the auditor within thirty
3 days after he or she takes office, or, if he or she is in
4 office, on the date this article becomes effective, then
5 within thirty days from such latter date, that such judge
6 elects not to become a member or make any payments
7 or contributions to the trust fund, in which event every
8 judge, so electing, shall not thereafter at any time be
9 entitled to receive any retirement pay or benefits under
10 provisions of this article, and any deduction that may
11 have theretofore been made from the salary of such
12 judge and paid into the fund shall be refunded without
13 interest, to him or her by the auditor by warrant drawn
14 on the trust fund. Any judge who has so elected not to
15 become a member or not to contribute, shall neverthe-
16 less thereafter be permitted to become such member,
17 contribute and become eligible for retirement benefits
18 by paying into the judges' retirement fund all contribu-
19 tions such judge would have been required to pay into
20 the fund, together with interest thereon at a rate to be
21 determined by the state auditor as reasonable for such
22 prior periods, as if such judge had not previously elected
23 not to be a member and not to contribute.

24 (b) There may be transfers of service credit on proper
25 basis between the judges' retirement system and the
26 public employees retirement system, where such service
27 credit constitutes qualified and eligible credit under the
28 recipient system's statutes, in order to allow full
29 flexibility of choice of option by a judge or judicial
30 member; but in no case shall benefits be receivable from
31 more than one of such state retirement systems, nor
32 shall any service credit be usable more than once and
33 then only in the finally chosen state retirement system.

§51-9-6. Eligibility for and payment of benefits.

1 (a) Except as otherwise provided in sections five,
2 twelve and thirteen of this article, and subject to the
3 provisions of subsection (e) of this section, any person
4 who is now serving, or who shall hereafter serve, as a
5 judge of any court of record of this state and shall have
6 served as such judge for a period of not less than sixteen
7 full years and shall have reached the age of sixty-five
8 years, or who has served as judge of such court or of

9 that court and other courts of record of the state for a
10 period of sixteen full years or more (whether continu-
11 ously or not and whether said service be entirely before
12 or after this article became effective, or partly before
13 and partly after said date, and whether or not said judge
14 shall be in office on the date he or she shall become
15 eligible to benefits hereunder) and shall have reached
16 the age of sixty-five years, or who is now serving, or who
17 shall hereafter serve, as a judge of any court of record
18 of this state and shall have served as such judge for a
19 period of not less than twenty-four full years, regardless
20 of age, shall, upon a determination and certification of
21 his or her eligibility as provided in section nine hereof,
22 be paid from the fund annual retirement benefits, so
23 long as he or she shall live, in an amount equal to
24 seventy-five percent of the annual salary of the office
25 from which he or she has retired based upon such salary
26 of such office and as such salary may be changed from
27 time to time during the period of his or her retirement
28 and the amount of his or her retirement benefits shall
29 be based upon and be equal to seventy-five percent of
30 the highest annual salary of such office for any one
31 calendar year during the period of his or her retirement,
32 and shall be payable in monthly installments: *Provided,*
33 *That such retirement benefits shall be paid only after*
34 *such judge has resigned as such or, for any reason other*
35 *than his or her impeachment, his or her service as such*
36 *has ended: Provided, however, That every such person*
37 *seeking to retire and to receive the annual retirement*
38 *benefits provided by this subsection must have served*
39 *a minimum of twelve years as a sitting judge of any such*
40 *court of record.*

41 (b) Notwithstanding any other provisions of this
42 article, any person who is now serving or who shall
43 hereafter serve as a judge of any court of record of this
44 state and who shall have accumulated sixteen years or
45 more of credited service, at least twelve years of which
46 is as a sitting judge of a court of record, and who has
47 attained the age of sixty-two years or more but less than
48 the age of sixty-five years, may elect to retire from his
49 or her office and to receive the pension to which he or
50 she would otherwise be entitled to receive at age sixty-

51 five, but with an actuarial reduction of pension benefit
52 to be established as a reduced annuity receivable
53 throughout retirement. The reduced percentage (less
54 than seventy-five percent) actuarially computed, deter-
55 mined and established at time of retirement in respect
56 of this reduced pension benefit shall also continue and
57 be applicable to any subsequent new annual salary set
58 for the office from which such judge has retired and as
59 such salary may be changed from time to time during
60 the period of his or her retirement.

61 (c) In determining eligibility for the benefits provided
62 by this section, active full-time duty (including leaves
63 and furloughs) in the armed forces of the United States
64 shall be eligible for qualification as credited military
65 service for the purposes of this article by any judge with
66 twelve or more years actual service as a sitting judge
67 of a court of record, such awardable military service to
68 not exceed five years.

69 (d) If a judge of a court of record has who is presently
70 sitting as such on the effective date of the amendments
71 to this section enacted by the Legislature at its regular
72 session held in the year one thousand nine hundred
73 eighty-seven, and who has served for a period of not less
74 than twelve full years and has made payments into the
75 judges' retirement fund as provided in this article for
76 each month during which he served as judge, following
77 the effective date of this section, any portion of time
78 which he or she had served as prosecuting attorney in
79 any county in this state shall qualify as years of service,
80 if such judge shall pay those sums required to be paid
81 pursuant to the provisions of section four of this article:
82 *Provided*, That any term of office as prosecuting
83 attorney, or part thereof, commencing after the thirty-
84 first day of December, one thousand nine hundred
85 eighty-eight, shall not hereafter in any way qualify as
86 eligible years of service under this retirement system.

87 (e) Any retirement benefit accruing under the provi-
88 sions of this section shall not be paid if otherwise barred
89 under the provisions of article ten-a, chapter five of this
90 code.

§51-9-6b. Annuities for surviving spouses and surviving dependent children of judges; automatic escalation and increase of annuity benefit; proration designation by judge permitted.

1 (a) There shall be paid, from the fund created or
2 continued by section two of this article, or from such
3 funds as may be appropriated by the Legislature for
4 such purpose, an annuity to the surviving spouse of a
5 judge, if such judge at the time of his or her death is
6 eligible for the retirement benefits provided by any of
7 the provisions of this article, or who has, at death,
8 actually served five years or more as a sitting judge of
9 any court of record of this state, exclusive of any other
10 service credit to which such judge may otherwise be
11 entitled, and who dies either while in office or after
12 resignation or retirement from office pursuant to the
13 provisions of this article. Said annuity shall amount to
14 forty percent of the annual salary of the office which
15 said judge held at his or her death or from which he
16 or she resigned or retired. In the event said salary is
17 increased or decreased while an annuitant is receiving
18 the benefits hereunder, his or her annuity shall amount
19 to forty percent of the new salary. The annuity granted
20 hereunder shall accrue monthly and shall be due and
21 payable in monthly installments on the first business
22 day of the month following the month for which the
23 annuity shall have accrued. Such annuity shall com-
24 mence on the first day of the month in which said judge
25 dies and shall, subject to the provisions of subsection (b)
26 of this section, terminate upon the death of the annuitant
27 or shall terminate upon the remarriage of the annuitant.

28 (b) If there be no surviving spouse at the time of death
29 of a judge who dies after serving five years or more as
30 a sitting judge of any court of record and such judge
31 leaves surviving him any dependent child or children
32 such dependent child or children shall receive an
33 amount equal to twenty percent of the annual salary of
34 the office which said judge held at the time of his or
35 her death: *Provided*, That the total of all such annuities
36 payable to each such child shall not exceed in the
37 aggregate an amount equal to forty percent of such

38 salary. Such annuity shall continue as to each such child
39 until (i) he or she attains the age of eighteen years or
40 (ii) attains the age of twenty-three years so long as such
41 child remains a full-time student. The auditor shall by
42 legislative rule establish the criteria for determining a
43 person's status as a full-time student within the meaning
44 and intent of this subsection. In the event there are
45 surviving any such judge three or more dependent
46 children, then each such child's annuity shall be
47 proratably reduced in order that the aggregate annuity
48 received by all such dependent children does not exceed
49 forty percent of such salary and the amount to be so
50 received by any such child shall continue throughout the
51 entire period during which each such child is eligible
52 to receive such annuity. The provisions of this subsection
53 shall also apply to those circumstances and situations
54 wherein a surviving spouse of a deceased judge shall die
55 while receiving benefits pursuant to subsection (a) of
56 this section and who shall leave surviving dependent
57 children of such deceased judge who would be entitled
58 to benefits under this subsection as if they had suc-
59 ceeded to such annuity benefits upon the death of such
60 judge in the first instance. In the event the salary of
61 judges is increased or decreased while an annuitant is
62 receiving benefits pursuant to this subsection, the
63 annuities payable shall be likewise increased or de-
64 creased proportionately to reflect such change in salary.
65 The annuities granted hereunder shall accrue monthly
66 and shall be due and payable in monthly installments
67 on the same day as surviving spouses benefits are
68 required to be paid. Such annuities shall commence on
69 the first day of the month in which any such dependent
70 child becomes eligible for benefits hereunder and shall
71 terminate on the last day of the month during which
72 such eligibility ceases.

§51-9-8. Retirement upon disability.

1 (a) Whenever a judge of a court of record of this state,
2 who is not disqualified from participation herein as
3 provided in section five of this article, who shall have
4 served for ten full years, or if over the age of sixty-five
5 years, who shall have served at least six years as a judge

6 of a court of record, shall become physically or mentally
7 incapacitated to perform the duties of his or her office
8 as judge during the remainder of his or her term and
9 shall make a written application to the governor for his
10 or her retirement, setting forth the nature and extent
11 of his or her disability and tendering his or her
12 resignation as such judge upon condition that upon its
13 acceptance he or she be retired with pay under the
14 provisions of this article, the governor shall make such
15 investigation as the governor shall deem advisable and,
16 if the governor shall determine that such disability
17 exists and that the public service is suffering and will
18 continue to suffer by reason of such disability, the
19 governor shall thereupon accept the resignation and, by
20 written order filed in the office of the secretary of state,
21 direct the retirement of the judge for the unexpired
22 portion of the term for which such judge was elected or
23 appointed. The secretary of state shall thereupon file a
24 certified copy of such order with the state auditor. When
25 so accepted, said resignation shall create a vacancy in
26 such office of judge, which shall be filled by appoint-
27 ment or election as provided by law. The retired judge
28 shall thereupon be paid annual retirement pay during
29 the remainder of his or her unexpired term in an
30 amount equal to the annual salary he or she was
31 receiving at the time of his or her disability retirement,
32 which annual retirement pay, so long as it shall be paid
33 to him or her, shall be in lieu of any and all retirement
34 benefits such judge may otherwise have received under
35 provisions of this article: *Provided*, That when the
36 payment of such full salary as disability retirement pay
37 shall have terminated with the close of his or her term
38 of office, such judge, even though he or she shall not
39 have arrived at the age of sixty-five years, shall, so long
40 as the disability determined by the governor continues
41 to exist, be paid the retirement benefits for which
42 provision is made in section six of this article: *Provided*,
43 *however*, That in the event any such judge shall die
44 during the continuation of his or her disability, then
45 such judge's surviving spouse shall receive the benefits
46 to which he or she would have been entitled pursuant
47 to the provisions of section six-b of this article and

48 subject to the limitations thereon: *Provided further*, That
49 any judge becoming a new member of this retirement
50 system on or after the first day of April, one thousand
51 nine hundred eighty-seven, and retiring upon disability
52 retirement subsequent to such date shall be paid upon
53 the basis of seventy-five percent of highest annual
54 salary, with allowable salary increase, as provided in
55 section six of this article during all disability retirement
56 receipt periods.

57 (b) Any other provision of this section to the contrary
58 notwithstanding, no judge shall be eligible pursuant to
59 this section unless such judge is also disabled to such an
60 extent so as to preclude such judge from engaging in
61 the practice of law during all of the period of such
62 disability.

§51-9-16. Severability of article and amendments thereto.

1 If any section, subsection, clause, phrase or require-
2 ment of this article or if any section, subsection, clause,
3 phrase or requirement of this article as amended by the
4 Legislature at its regular session held in the year one
5 thousand nine hundred eighty-seven, if for any reason
6 held to be unconstitutional, such decision shall not affect
7 the validity of the remaining portions. The Legislature
8 hereby declares that it would have passed this article,
9 and each section, subsection, sentence, clause or phrase
10 and requirement thereof, including any amendments
11 thereto adopted by the Legislature at its regular session
12 held in the year one thousand nine hundred eighty-
13 seven, irrespective of the fact that any one or more
14 sections, subsections, clauses, phrases or requirements
15 be declared unconstitutional.

CHAPTER 71

(H. B. 2247—By Delegates McCormick and McKinley)

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

AN ACT to amend and reenact section five, article one,
chapter twenty-one of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to continuing the department of labor, following an audit by the joint committee on government operations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE DEPARTMENT OF LABOR.

§21-1-5. Reestablishment of department; findings.

1 After having conducted a performance and fiscal
2 audit through its joint committee on government
3 operations, pursuant to section nine, article ten, chapter
4 four of this code, the Legislature hereby finds and
5 declares that the department of labor should be
6 continued and reestablished. Accordingly, notwithstand-
7 ing the provisions of section four, article ten, chapter
8 four of this code, the department of labor shall continue
9 to exist until the first day of July, one thousand nine
10 hundred eighty-eight.

CHAPTER 72

(Com. Sub. for S. B. 315—By Senators Boettner, Holliday, Holmes, Chernenko, Kaufman, Lucht and Chafin)

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

AN ACT to amend chapter twenty-one 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 creating an occupational safety and health division for public employees within the department of labor; definitions; application of article; duties of employer and employee; providing for the adoption of rules relating to occupational health and safety standards; adoption of federal and state standards; variances; emergency standards; authorizing the commissioner of labor to conduct appropriate inspections and investigations; records to be kept;

issuance of citations by commissioner for violations; establishing an occupational health and safety review commission to review the commissioner's citations and determinations; terms; compensation; notification to employer of violation; hearing; appeal from review commission; discrimination against employee; investigation; civil action; authorizing circuit courts to enjoin certain dangerous conditions or practices in places of employment; research and demonstration projects; education programs; reports to United States secretary of labor; advisory board; membership; appointment; terms; vacancies; and compensation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. OCCUPATIONAL SAFETY AND HEALTH ACT.

- §21-3A-1. Short title.
- §21-3A-1a. Legislative policy.
- §21-3A-2. Definitions.
- §21-3A-3. Division of occupational safety and health; coordination of activities with workers' compensation commissioner.
- §21-3A-4. Application of article.
- §21-3A-5. Duties of employer and employee.
- §21-3A-6. Rules.
- §21-3A-7. Adoption of federal and state standards; variances.
- §21-3A-8. Inspections and investigations; records.
- §21-3A-9. Citation for violation.
- §21-3A-10. Occupational safety and health review commission.
- §21-3A-11. Notice to employer of contest period; action by commissioner; action by review commission.
- §21-3A-12. Appeal from review commission.
- §21-3A-13. Discrimination against employee filing complaint.
- §21-3A-14. Enjoining of conditions or practices at places of employment; mandamus against commissioner for failure to act.
- §21-3A-15. Research and demonstration projects.
- §21-3A-16. Education program.
- §21-3A-17. Reports to United States secretary of labor.
- §21-3A-18. Occupational safety and health advisory board created; qualifications of members; members appointed by governor; term; filling of vacancies; payment of expenses.
- §21-3A-19. Optional coverage by subdivisions.

§21-3A-1. Short title.

1 This article shall be known and cited as the "West
2 Virginia Occupational Safety and Health Act."

§21-3A-1a. Legislative policy.

1 The Legislature finds that the safety and health of
2 public employees in the workplace is of primary public
3 concern. Personal injuries and illnesses arising out of
4 work situations result not only in wage loss and
5 increased medical expenses for public employees, but
6 also in decreased productivity and increased workers'
7 compensation expenses for public employers. The
8 Legislature therefore declares:

9 (a) That it is the policy of this state to ensure that all
10 public employees be provided with safe and healthful
11 work environments free from recognized and avoidable
12 hazards;

13 (b) That it is the responsibility of the state to
14 promulgate standards for the protection of the health
15 and safety of its public workforce; and

16 (c) That it is in the public interest for public employ-
17 ers and public employees to join in a cooperative effort
18 to enforce these standards.

§21-3A-2. Definitions.

1 As used in this chapter, unless the context clearly
2 indicates otherwise:

3 (a) "Commission" means the occupational safety and
4 health review commission established under this article;

5 (b) "Commissioner" means the labor commissioner or
6 his designated agent;

7 (c) "Employee" means any public employee of the
8 state, or any state agency;

9 (d) "Employer" means public employer and shall
10 include the state or any department, division, bureau,
11 board, council, agency or authority of the state, but shall
12 not include the department of corrections, the depart-
13 ment of health and the Legislature;

14 (e) "Occupational safety and health standard" means

15 a standard for health or safety which requires the
16 adoption or use of one or more practices, means,
17 methods, operations or processes reasonably necessary
18 or appropriate to provide safe and healthful employment
19 in places of employment;

20 (f) "Person" means one or more individuals; and

21 (g) "Workplace" means a place where public em-
22 ployees are assigned to work but shall not include any
23 place where public employees are assigned to work that
24 is inspected and regulated in accordance with federal
25 occupational safety and health standards or mine safety
26 and health administration standards, or facilities under
27 the authority of the department of corrections, the
28 department of health, or the Legislature.

**§21-3A-3. Division of occupational safety and health;
coordination of activities with workers'
compensation commissioner.**

1 (a) There is hereby created in the labor department
2 a division of occupational safety and health, comprised
3 of a subdivision for safety, a subdivision for health and
4 such other subdivisions as the commissioner considers
5 necessary. This division shall administer all matters
6 pertaining to occupational safety and occupational
7 health.

8 (b) The labor commissioner may require the assist-
9 ance of other state agencies and may enter into
10 agreements with other state agencies and political
11 subdivisions of the state for the administration of this
12 chapter.

13 (c) The labor commissioner shall provide for coordi-
14 nation between the division of occupational safety and
15 health and the workers' compensation commissioner
16 including, but not limited to, the establishment of
17 standardized procedures and reportings.

§21-3A-4. Application of article.

1 (a) This article applies to all public employers, public
2 employees and public workplaces within the state of
3 West Virginia.

4 (b) Nothing in this article may be construed to
5 supersede or in any manner affect any workers'
6 compensation law or to diminish in any manner common
7 law or statutory rights, duties or liabilities of employers
8 or employees, under any law with respect to injuries,
9 diseases or death of employees arising out of and in the
10 course of employment.

§21-3A-5. Duties of employer and employee.

1 (a) Each employer shall furnish to each of his
2 employees employment and a place of employment
3 which are free from recognized hazards causing or
4 likely to cause death or serious physical harm or serious
5 illness to his employees.

6 (b) Each employer shall, upon the written request of
7 any employee, furnish the employee with a written
8 statement listing the substances which the employee
9 uses or with which the employee comes into contact,
10 which substances have been identified as toxic and
11 hazardous by occupational safety and health standards,
12 under Title 29 CFR 1910.1000 "Air Contaminant Code
13 of Federal Regulations" through 1910.1046, or listed in
14 the most recent National Institute for Occupational
15 Safety and Health Registry of the Toxic Effects of
16 Chemical Substances (RTECS).

17 (c) Each employer shall comply with occupational
18 safety and health standards promulgated under this
19 article.

20 (d) Each employee shall comply with occupational
21 safety and health standards and all regulations and
22 orders issued pursuant to this article which are
23 applicable to his actions and conduct.

§21-3A-6. Rules.

1 In the rules adopted under the authority of this
2 article, the commissioner shall:

3 (a) Provide for the preparation, adoption, amendment
4 or repeal of rules necessary to effectuate the health and
5 safety purposes of this article;

6 (b) Provide educational programs to encourage em-

7 ployers and employees in their efforts to reduce the
8 number of safety and health hazards and to stimulate
9 employers and employees to institute new programs,
10 and to perfect existing programs to provide for safe and
11 healthful working conditions;

12 (c) Provide for appropriate reporting procedures by
13 employers with respect to information relating to
14 conditions of employment which will assist in achieving
15 the objectives of this article;

16 (d) Provide for the frequency, method and manner of
17 making inspections of workplaces without advance
18 notice: *Provided*, That in the event of an emergency or
19 unusual situation, the commissioner may give advance
20 notice;

21 (e) Provide for the publication and dissemination to
22 employers, employees and labor organizations and the
23 posting, where appropriate, by employers of informa-
24 tional, educational or training materials calculated to
25 aid and assist in achieving the objectives of this article;
26 and

27 (f) Provide for the establishment of new programs,
28 and the perfection and expansion of existing programs
29 for occupational safety and health education for employ-
30 ers and employees and institute methods and procedures
31 to establish a program for voluntary compliance by
32 employers and employees with the requirements of this
33 article and all applicable safety and health standards
34 and regulations promulgated pursuant to the authority
35 of this article.

**§21-3A-7. Adoption of federal and state standards;
variances.**

1 (a) The commissioner, on or before the first day of
2 July, one thousand nine hundred eighty-seven, shall
3 provide at the minimum, for the adoption of all
4 occupational safety and health standards, amendments
5 or changes adopted or recognized by the United States
6 Secretary of Labor under the authority of the Occupa-
7 tional Safety and Health Act of 1970, which are in effect
8 on the effective date of this section. Where no federal

9 standards are applicable, or where standards more
10 stringent than the federal standards are deemed
11 advisable, the commissioner shall provide for the
12 development of such state standards as will comport
13 with the purposes of this act. Standards shall be adopted
14 through state administrative procedures.

15 (b) In the event of emergency or unusual situations,
16 the commissioner shall provide for an emergency
17 temporary standard to take effect immediately if he
18 determines:

19 (1) Employees are exposed to grave danger from
20 exposure to substances or agents determined to be toxic
21 or physically harmful or from new hazards; and

22 (2) The emergency standard is necessary to protect
23 employees from such danger.

24 The emergency standard may be in effect not longer
25 than one hundred eighty days or, if renewed in com-
26 pliance with the laws of this state governing the
27 adoption or extension of rules, not longer than sixty
28 additional days. On or before the expiration date of the
29 emergency standard or renewal thereof, the commis-
30 sioner shall develop a permanent standard to replace the
31 emergency standard.

32 (c) Any standard promulgated shall prescribe the use
33 of labels or other appropriate forms of warning neces-
34 sary to ensure that employees are apprised of all
35 hazards to which they are exposed, relevant symptoms
36 and appropriate emergency treatment and, where
37 appropriate, proper conditions and precautions of safe
38 use or exposure. The standard shall also prescribe
39 suitable protective equipment and control procedures
40 for use in connection with such hazards and shall
41 provide for measuring employee exposure in the manner
42 necessary for the protection of employees. In addition,
43 where appropriate, the standard shall prescribe the type
44 and frequency of medical examinations or other tests
45 which shall be made available to employees exposed to
46 such hazards in order to determine any adverse effect
47 from that exposure.

48 (d) Any employer may apply to the commissioner for
49 a temporary order granting a variance from a standard,
50 or any provision thereof, promulgated under this
51 section. A temporary order shall be granted if the
52 employer files an application which meets the require-
53 ments of subsection (e) of this section and establishes
54 that:

55 (1) He is unable to comply with a standard by its
56 effective date because of unavailability of professional or
57 technical personnel or of materials and equipment
58 needed to come into compliance with the standard or
59 because necessary construction or alteration of facilities
60 cannot be completed by the effective date;

61 (2) He is taking all available steps to safeguard
62 employees against the hazards covered by the standard;
63 and

64 (3) He has an effective program for coming into
65 compliance with the standard as quickly as practicable.

66 Any temporary order issued under this subsection
67 shall prescribe the practices, means, methods, opera-
68 tions and processes which the employer must adopt and
69 use while the order is in effect and state in detail his
70 program for coming into compliance with the standard.
71 A temporary order may be granted only after notice by
72 the commissioner to employees and an opportunity for
73 a hearing before the commissioner: *Provided*, That the
74 commissioner may issue one interim order to be
75 effective until a decision is made on the basis of the
76 hearing. No temporary order may be in effect for longer
77 than the period needed by the employer to achieve
78 compliance with the standard or one year, whichever is
79 shorter: *Provided, however*, That an order may be
80 renewed if the requirements of this subsection are met
81 and if an application for renewal is filed at least ninety
82 days prior to the expiration date of the order. No
83 interim renewal of an order may remain in effect longer
84 than one hundred eighty days.

85 (e) An application for a temporary variance order
86 shall contain:

87 (1) A specification of the standard or portion thereof
88 from which the employer seeks a variance;

89 (2) A representation by the employer, supported by
90 representations from qualified persons who have
91 firsthand knowledge of the facts represented, that he is
92 unable to comply with the standard or portion thereof
93 and a detailed statement of the reasons therefor;

94 (3) A statement of the steps he has taken and will
95 take, with specific dates, to protect employees against
96 the hazard covered by the standards;

97 (4) A statement of when he expects to comply with the
98 standard and what steps he has taken and what steps
99 he will take, with dates specified, to come into com-
100 pliance with the standard; and

101 (5) A certification that he has informed his employees
102 of the application by giving a copy thereof to their
103 authorized representative, posting a statement giving a
104 summary of the application and specifying where a copy
105 may be examined at the place or places where notices
106 to employees are normally posted and by other approp-
107 riate means. A description of how employees have been
108 informed shall be contained in the certification. The
109 information to employees shall inform them of their
110 right to petition the commissioner for a hearing. The
111 commissioner is authorized to grant a variance from any
112 standard or portion thereof whenever he determines
113 that a variance is necessary to permit an employer to
114 participate in an experiment, approved by the commis-
115 sioner, designed to demonstrate or validate new and
116 improved techniques to safeguard the health or safety
117 of workers.

118 (f) Any affected employer may apply to the commis-
119 sioner for an order granting a variance from a standard
120 promulgated under this section. Affected employees
121 shall be given notice of each such application and an
122 opportunity to participate in a hearing before the
123 commissioner. The commissioner shall issue such order
124 if he determines on the record, after opportunity for an
125 inspection where appropriate and a hearing, that the
126 proponent of the variance has demonstrated by a

127 preponderance of the evidence that the conditions,
128 practices, means, methods, operations or processes used
129 or proposed to be used by an employer will provide
130 employment and places of employment which are as safe
131 and healthful as those which would prevail if he
132 complied with the standard. The order issued shall
133 prescribe the conditions the employer must maintain
134 and the practices, means, methods, operations and
135 processes which he must adopt and utilize to the extent
136 they differ from the standard in question. The order
137 may be modified or revoked upon application by an
138 employer or employees, or by the commissioner on his
139 own motion, in the manner prescribed for its issuance
140 under this subsection at any time after six months from
141 its issuance.

142 (g) Any employee who may be adversely affected by
143 a standard or variance or regulation issued under this
144 section may challenge the validity or applicability of a
145 standard or variance or regulation by bringing an action
146 for a declaratory judgment.

147 (h) It is the expressed intent of the Legislature that
148 an unlimited number of variances may be granted, if the
149 conditions of this section are met.

§21-3A-8. Inspections and investigations; records.

1 (a) In order to carry out the purposes of this article,
2 the commissioner or his agent, upon presenting approp-
3 riate credentials to the employer, is authorized:

4 (1) To enter without advance notice, except as pro-
5 vided in subsection (d) of section six, and at reasonable
6 times may enter any workplace or environment where
7 work is performed by an employee of an employer; and

8 (2) To inspect and investigate, during regular work-
9 ing hours and at other reasonable times and within
10 reasonable limits and in a reasonable manner, any place
11 of employment and all pertinent conditions, structures,
12 machines, apparatus, devices, equipment and the
13 materials therein, and to question privately any em-
14 ployer or employee. No public employer may refuse to
15 allow a representative of the commissioner to inspect a

16 place of employment. If an employer attempts to prevent
17 a representative of the department from conducting an
18 inspection, the commissioner may obtain an inspection
19 warrant from the circuit court of Kanawha County or
20 the circuit court of the county wherein the employer is
21 located.

22 (b) In making his inspections and investigations
23 under this entire article the commissioner may require
24 the attendance and testimony of witnesses and the
25 production of evidence under oath. Witnesses shall be
26 paid the same fees and mileage that are paid witnesses
27 in the courts of this state. In case of contumacy or failure
28 or refusal of any person to obey such an order, the
29 circuit court for the judicial circuit wherein the person
30 resides, is found or transacts business has jurisdiction
31 to issue to the person an order requiring the person to
32 appear, to produce evidence if asked and, when so
33 ordered, to give testimony relating to the matter under
34 investigation or in question. Any failure to obey such
35 order of the court may be punished by the court as a
36 contempt thereof.

37 (c) (1) Each employer shall make, keep, preserve and
38 make available to the commissioner and the United
39 States secretary of labor records regarding his activities
40 relating to this entire article as the commissioner may
41 prescribe by rule as necessary or appropriate for the
42 enforcement of this article or for developing information
43 regarding the causes and prevention of occupational
44 accidents and illnesses. In order to carry out the
45 provisions of this subdivision, these rules may include
46 provisions requiring employers to conduct periodic
47 inspections. The commissioner shall also issue rules
48 requiring that employers, through posting of notices or
49 other appropriate means, keep their employees informed
50 of their protections and obligations under this entire
51 article, including the provisions of applicable standards.

52 (2) The commissioner shall prescribe rules requiring
53 employers to maintain accurate records of and to make
54 periodic reports on work-related deaths, injuries and
55 illnesses other than minor injuries requiring only first-
56 aid treatment and not involving medical treatment, loss

57 of consciousness, restriction of work or motion or
58 transfer to another job.

59 (3) The commissioner shall issue rules requiring
60 employers to maintain accurate records of employee
61 exposures to potentially toxic materials or harmful
62 physical agents which are required to be monitored or
63 measured under any occupational safety and health
64 standard adopted under this entire chapter. These
65 regulations shall provide employees or their representa-
66 tives an opportunity to observe the monitoring or
67 measuring and to have access to the records. The
68 regulations shall also make appropriate provisions for
69 each employee or former employee to have such access
70 to the records as will indicate his own exposure to toxic
71 materials or harmful physical agents. Each employer
72 shall promptly notify any employee who has been or is
73 being exposed to toxic materials or harmful physical
74 agents in concentrations or at levels which exceed those
75 prescribed by an applicable occupational safety and
76 health standard promulgated under section six of this
77 article and shall inform any employee who is being thus
78 exposed of the corrective action being taken.

79 (d) Any information obtained by the commissioner
80 under this entire article shall be obtained with a
81 minimum burden upon employers. Unnecessary dupli-
82 cation of efforts in obtaining information shall be
83 eliminated to the maximum extent feasible.

84 (e) Subject to rules issued by the commissioner, a
85 representative of the employer and a representative
86 authorized by the employees of the employer shall be
87 given an opportunity to accompany the commissioner or
88 his authorized representative during the physical
89 inspection of any workplace for the purpose of aiding the
90 inspection. Where there is no authorized employee
91 representative, the commissioner or his authorized
92 representative shall consult with a reasonable number
93 of employees concerning matters of health and safety in
94 the workplace.

95 (f) (1) Any employee or representative of employees
96 who believes that there is a violation of an occupational

97 safety or health standard or that there is an imminent
98 danger of physical harm may request an inspection by
99 giving notice to the commissioner or his authorized
100 representative of the violation or danger. The notice
101 shall be reduced to writing, shall set forth with
102 reasonable particularity the grounds for the notice and
103 shall be signed by the employees or their representative.
104 A copy of the notice shall be provided the employer or
105 his agent no later than the time of the inspection:
106 *Provided*, That upon the request of the person giving the
107 notice, his name and the names of individual employees
108 referred to therein shall not appear in the copy or on
109 any record published, released or made available
110 pursuant to subsection (g) of this section. If, upon receipt
111 of the notification, the commissioner determines there
112 are reasonable grounds to believe that such violation or
113 danger exists, he shall make an inspection in accordance
114 with the provisions of this section as soon as practicable
115 to determine if the violation or danger exists. The
116 commissioner shall maintain records of the results of
117 any such investigation, which shall be made available
118 to the public upon request. The authority of the
119 commissioner to inspect any premises for purposes of
120 investigating an alleged violation of safety standards
121 shall not be limited to the alleged violation but shall
122 extend to any other area of the premises in which he
123 has reason to believe that a violation of the safety
124 standards promulgated under this act exists. If the
125 commissioner determines there are no reasonable
126 grounds to believe that the violation or danger exists,
127 he shall notify the employer, employee or representative
128 of employees in writing of the determination. The
129 notification does not preclude future enforcement action
130 if conditions change.

131 (2) Prior to or during any inspection of a workplace,
132 any employees or representative of employees employed
133 in the workplace may notify the commissioner, or any
134 representative of the commissioner responsible for
135 conducting the inspection, in writing of any violation of
136 this entire article which they have reason to believe
137 exists in the workplace. The commissioner shall, by rule,
138 establish procedures for review of any refusal by a

139 representative of the commissioner to issue a citation
140 with respect to any alleged violation, and shall furnish
141 the employer and the employees or representative of
142 employees requesting the review a written statement of
143 the reasons for the commissioner's final disposition of
144 the case. The notification does not preclude future
145 enforcement action if conditions change.

146 (g) (1) The commissioner is authorized to compile,
147 analyze and publish in either summary or detail form
148 all reports or information obtained under this section.

149 (2) The commissioner shall prescribe such rules as he
150 considers necessary to carry out his responsibilities
151 under this article, including rules dealing with the
152 inspection of an employer's or owner's establishment.

§21-3A-9. Citation for violation.

1 (a) If, upon inspection or investigation, the commis-
2 sioner or his authorized representative believes that an
3 employer or employee has violated any safety and health
4 standards or variance or the commissioner finds a
5 condition which poses a recognized hazard likely to
6 cause death or serious physical harm or illness, the
7 commissioner shall, with reasonable promptness, issue
8 a citation to the employer or employee. Each citation
9 shall be in writing and shall describe with particularity
10 the nature of the violation, including a reference to the
11 provision of this article, or the standard, rule or order
12 alleged to have been violated. The citation shall fix a
13 reasonable time for the abatement of the violation.

14 (b) Each citation issued under this section or a copy
15 or copies thereof shall be prominently posted as
16 prescribed in rules issued by the commissioner at or
17 near each place a violation referred to in the citation
18 occurred.

§21-3A-10. Occupational safety and health review commission.

1 (a) There is hereby created a West Virginia occupa-
2 tional safety and health review commission within the
3 labor department for administrative purposes only. The
4 commission shall consist of three members appointed by

5 the governor, by and with consent of the Senate, from
6 among persons who, by reason of training, education or
7 experience, are qualified to carry out the functions of
8 the commission under this article. The governor shall
9 designate one of the members of the commission to serve
10 as chairman.

11 (b) Members of the review commission shall serve
12 terms of four years and until their successors are
13 appointed.

14 (c) The review commission shall hold monthly meet-
15 ings and such additional meetings as necessary. A
16 majority of the review commission shall constitute a
17 quorum for the transaction of business. Special meetings
18 of the review commission may be called upon reasonable
19 notice by the commissioner or by any two members of
20 the commission.

21 (d) The review commission shall hear and rule on
22 appeals from citations, variances and notifications
23 issued under the provisions of this article and shall
24 adopt and promulgate rules with respect to the proced-
25 ural aspects of its hearings. The rules shall provide
26 affected employees and their representatives an oppor-
27 tunity to participate as parties at hearings under this
28 section. Such employees shall be given time off by their
29 employers to participate in these hearings.

30 (e) The chairman of the commission and each of the
31 other two members shall be paid a per diem allowance
32 for days in performance of their duties at the rate of one
33 hundred dollars per diem, together with their expenses
34 at a rate determined by law.

35 (f) To conduct hearings, the review commission or
36 chairman may subpoena and examine witnesses, require
37 the production of evidence, administer oaths and take
38 testimony and depositions.

39 (g) After hearing an appeal the review commission
40 may sustain, modify or dismiss a citation.

**§21-3A-11. Notice to employer of contest period; action by
commissioner; action by review
commission.**

1 (a) If, after inspection or investigation, the commis-

2 sioner issues a citation pursuant to section nine, he shall,
3 within a reasonable time after the termination of the
4 inspection or investigation, notify the employer or
5 employee by certified mail. The notification shall inform
6 the employer or employee that he has fifteen working
7 days from the receipt of notice within which to notify
8 the commissioner that he wishes to contest the citation
9 or to seek a variance. If the employer or employee fails
10 to so notify the commissioner within fifteen days, and
11 if no notice is filed by any employee or representative
12 of employees pursuant to subsection (c) of this section
13 within fifteen days, the citation, as proposed, becomes
14 a final order and not subject to review by any court or
15 agency.

16 (b) If the commissioner has reason to believe that an
17 employer or employee has failed to correct a violation
18 for which a citation has been issued within the period
19 permitted for correction, the commissioner shall notify
20 the employer or employee by certified mail or personal
21 service of such failure and the commissioner shall seek
22 judicial enforcement of such citation order: *Provided,*
23 That in the case of a review proceeding initiated by the
24 employer or employee under this section in good faith
25 and not solely for delay, the period permitted for
26 correction of the violation does not begin to run until the
27 entry of a final order by the review commission. The
28 notification by the commissioner shall inform the
29 employer or employee that he has fifteen working days
30 from the receipt of the notice within which to notify the
31 commissioner that he wishes to contest the notification.
32 If, within fifteen days from receipt of notification under
33 this section, the employer or employee fails to notify the
34 commissioner that he intends to contest the notification,
35 the notification and assessment as proposed become a
36 final order of the commission and not subject to review
37 by any court or agency.

38 (c) If an employer or employee notifies the commis-
39 sioner within the fifteen day period provided for in
40 subsection (b) of this section that he wishes to contest
41 the notification, the commissioner shall immediately
42 advise the commission of the notification and the

43 commission shall afford an opportunity for a hearing.
44 Upon a showing by an employer or employee of a good
45 faith effort to comply with the abatement requirements
46 of a citation and a showing that abatement has not been
47 completed because of factors beyond his reasonable
48 control, the commissioner, after an opportunity for a
49 hearing as provided in this subsection, shall issue an
50 order affirming or modifying the abatement require-
51 ments in the citation. The rules of procedure prescribed
52 by the commission shall provide affected employees or
53 representatives of affected employees an opportunity to
54 participate as parties to hearings under this subsection.

55 (d) If the employer or employee, at a hearing under
56 subsection (c) of this section, does not prove he made a
57 good faith effort to comply, the commission shall seek
58 judicial enforcement to compel compliance.

§21-3A-12. Appeal from review commission.

1 Any employer or employee, or the commissioner,
2 adversely affected or aggrieved by an order of the
3 review commission, after all administrative remedies
4 provided by this article have been exhausted, is entitled
5 to judicial review pursuant to section four, article five,
6 chapter twenty-nine-a of this code.

§21-3A-13. Discrimination against employee filing complaint.

1 (a) No employer may discharge or in any manner
2 discriminate against any employee because the em-
3 ployee has filed any complaint, instituted or caused to
4 be instituted or participated in any proceedings under
5 or related to this article, has testified or is about to
6 testify in any such proceedings or has exercised on
7 behalf of himself or others any right afforded by this
8 article.

9 (b) Any employee who believes that he has been
10 discharged or otherwise discriminated against by any
11 person in violation of this section may, within thirty
12 days after the alleged violation occurs, file a complaint
13 with the commissioner alleging such discrimination.
14 Upon receipt of the complaint the commissioner shall

15 cause an investigation to be made. If after such
16 investigation the commissioner determines that the
17 provisions of this section have been violated, he shall
18 bring an action in the circuit court of Kanawha County
19 against the employer. In any such action, the court has
20 jurisdiction, for cause shown, to restrain violations of
21 subsection (a) of this section and to order all appropriate
22 relief including rehiring or reinstatement of the
23 employee to his former position with back pay plus
24 interest at the statutory rate in this state.

**§21-3A-14. Enjoining of conditions or practices at places
of employment; mandamus against commissioner for failure to act.**

1 (a) The circuit court of Kanawha County or the circuit
2 court in the county wherein the workplace is located has
3 jurisdiction, upon petition by the commissioner, to
4 restrain or enjoin any conditions or practices in any
5 workplace which are such that a danger exists which
6 could reasonably be expected to cause death or serious
7 physical harm immediately or before the imminence of
8 the danger can be eliminated through the enforcement
9 procedures otherwise provided by this article. Any order
10 issued under this section may require such steps to be
11 taken as are necessary to avoid, correct or remove the
12 imminent danger and prohibit the employment or
13 presence of any individual in locations or under
14 conditions where the imminent danger exists, except the
15 presence of those individuals whose presence is neces-
16 sary to avoid, correct or remove such imminent danger,
17 or to maintain the capacity of a continuous process
18 operation, or to resume normal operations without a
19 complete cessation of operations or, where a cessation of
20 operation is necessary, to permit such to be accomp-
21 lished in a safe and orderly manner. No temporary
22 restraining order issued without notice may be effective
23 for more than five days.

24 (b) Whenever and as soon as an inspector concludes
25 that conditions or practices described in subsection (a)
26 of this section exist in any place of employment, he shall
27 inform the affected employees and employer of the
28 danger and shall further inform those persons that he

29 is recommending to the commissioner that relief be
30 sought. If the commissioner fails to seek relief under this
31 section within forty-eight hours of being notified of such
32 conditions, any employee who may have been injured by
33 reason of such failure or the authorized representative
34 of such employee may seek injunctive relief.

§21-3A-15. Research and demonstration projects.

1 The commissioner shall conduct research and under-
2 take demonstration projects relating to occupational
3 safety and health issues and problems, either within the
4 labor department or by grants or contracts. The
5 commissioner may prescribe rules requiring employers
6 to measure, record and make reports on exposure of
7 employees to toxic substances which he believes may
8 endanger the health or safety of employees. The
9 commissioner shall cooperate with the director of the
10 national institute for occupational safety and health of
11 the department of health and human services of the
12 United States in establishing programs of medical
13 examinations and tests necessary to determine the
14 incidence of occupational illness and employee suscep-
15 tibility to such illnesses. Such programs, upon the
16 request of the employer, may be paid for by the
17 commissioner, together with such other assistance as
18 may be required. Information obtained under this
19 section shall be made public without revealing the
20 names of individual workers covered by physical
21 examination or special studies and shall be made
22 available to employers, employees and their authorized
23 representatives.

§21-3A-16. Education program.

1 (a) The commissioner shall conduct directly or by
2 grants or contracts education programs to provide an
3 adequate supply of qualified personnel to carry out the
4 purposes of this article and information programs on the
5 importance and proper use of adequate safety and
6 health equipment.

7 (b) The commissioner is authorized to conduct di-
8 rectly or by grants or contracts short-term training of
9 personnel engaged in work related to this responsibility
10 under this article.

11 (c) The commissioner shall provide for the establish-
12 ment and supervision of programs for the education and
13 training of employers and employees in the recognition,
14 avoidance and prevention of unsafe or unhealthful
15 working conditions in employment covered by this
16 article. The commissioner shall consult with and advise
17 employers, employees and organizations representing
18 employers and employees as to effective means of
19 preventing occupational injuries and illnesses.

§21-3A-17. Reports to United States secretary of labor.

1 In regard to the administration and enforcement of
2 this article, the commissioner shall make reports to the
3 secretary of labor of the United States in such form and
4 containing such information as the secretary shall from
5 time to time require.

§21-3A-18. Occupational safety and health advisory board created; qualifications of members; members appointed by governor; term; filling of vacancies; payment of expenses.

1 There is created a public employees occupational
2 safety and health advisory board to assist the commis-
3 sioner in establishing standards for the occupational
4 safety and health of public employees. The board shall
5 make itself available to receive information regarding
6 matters of concern to public employees in the areas of
7 occupational safety and health.

8 The board shall be composed of nine members in
9 addition to the commissioner of labor who shall be an
10 ex officio member and shall sit as chairman of the
11 advisory board. The members of the board shall be
12 citizens and residents of this state, who shall be selected
13 on the basis of their responsibility, experience, compe-
14 tence and commitment in the field of public employee
15 occupational safety and health.

16 The members of the board shall be appointed by and
17 serve at the will and pleasure of the governor. There
18 shall be three members representing public employers,
19 three members who are public employees in the various
20 areas of state and local government, and three members

21 who are not employers or employees as defined in this
22 section and do not represent by their occupation either
23 party. No more than five members appointed by the
24 governor shall be from the same political party.

25 The terms of all members shall commence on the first
26 day of July, one thousand nine hundred eighty-seven.
27 The terms of one member representing public employ-
28 ers, one member representing public employees, and one
29 member representing the general public shall run
30 through the thirtieth day of June, one thousand nine
31 hundred eighty-eight. The terms of one other member
32 representing public employers, one other member
33 representing public employees, and one other member
34 representing the general public shall run through the
35 thirtieth day of June, one thousand nine hundred eighty-
36 nine. The terms of the remaining member representing
37 public employers, the remaining member representing
38 public employees, and the remaining member represent-
39 ing the general public shall run through the thirtieth
40 day of June, one thousand nine hundred ninety.
41 Thereafter, terms of members shall be for three years.

42 All members shall be eligible for reappointment by
43 the governor. A member shall, unless sooner removed,
44 continue to serve until his term expires and his
45 successor has been appointed by the governor and has
46 qualified. A vacancy caused by the death, resignation,
47 or removal of a member prior to the expiration of his
48 term shall be filled by the governor and only for the
49 remainder of such term.

50 The members of the advisory board shall serve
51 without compensation but shall be entitled to reimbur-
52 sement for their necessary expenses actually incurred in
53 the performance of their duties.

§21-3A-19. Optional coverage by subdivisions.

1 The governing body of any county or municipality or
2 any department, division, bureau, board, council, agency
3 or authority of any county or municipality or of any
4 school district or special purposes district created
5 pursuant to law may, by ordinance, resolution or other
6 procedure, explicitly elect that some or all of its

7 workplaces or employees shall be covered by the
8 provisions of this article. The commissioner shall issue
9 rules and regulations and prescribe forms and proce-
10 dures regarding such optional coverage. The commis-
11 sioner may issue rules and regulations providing for
12 variances from the procedural and substantive require-
13 ments of this article in the case of the optional coverage
14 described herein.

CHAPTER 73

(S. B. 740—Originating in the Senate Committee on the Judiciary)

[Passed March 12, 1987; in effect ninety days from passage. Vetoed by the Governor. Passed over veto.]

AN ACT to amend and reenact sections one, fourteen, fifteen and sixteen, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seven, article three, chapter twenty-two-a of said code, all relating to the requirement of the posting of bond or other security to secure the payment of wages and fringe benefits by employers engaged in construction work or in the severance, production or transportation of minerals; defining certain terms with respect thereto; establishing rules as to when such bond would be required or exempted; the form of such bond; requiring a copy of such bond to be filed in the office of the clerk of the county commission wherein any such employer is doing business; authorizing certain civil or criminal proceedings to enforce the provisions of the article; providing for the procedures of termination of such bond; requiring certain notification to the commissioner of labor by persons who contract or subcontract with employers who are required to post such bonds; requiring the posting of such bonds as condition precedent to the receipt of a prospecting permit under the surface coal mining and reclamation act; prohibiting certain acts with respect to violations of the provisions of said article as the same relates to the bonding requirements thereof; and providing for penalties for violations thereof.

Be it enacted by the Legislature of West Virginia:

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

Chapter

21. Labor.

22A. Mines and Minerals.

CHAPTER 21. LABOR.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-1. Definitions.

§21-5-14. Employer's bond for wages and benefits.

§21-5-15. Violations; criminal penalties.

§21-5-16. Contractors and subcontractors to notify commissioner.

§21-5-1. Definitions.

1 As used in this article:

2 (a) The term "firm" includes any partnership, associ-
3 ation, joint-stock company, trust, division of a corpora-
4 tion, the administrator or executor of the estate of a
5 deceased individual, or the receiver, trustee, or succes-
6 sor of any of the same, or officer thereof, employing any
7 person.

8 (b) The term "employee" or "employees" includes any
9 person suffered or permitted to work by a person, firm
10 or corporation.

11 (c) The term "wages" means compensation for labor
12 or services rendered by an employee, whether the
13 amount is determined on a time, task, piece, commission
14 or other basis of calculation. As used in sections four,
15 five, eight-a, ten and twelve of this article, the term
16 "wages" shall also include then accrued fringe benefits
17 capable of calculation and payable directly to an
18 employee: *Provided*, That nothing herein contained shall
19 require fringe benefits to be calculated contrary to any

20 agreement between an employer and his employees
21 which does not contradict the provisions of this article.

22 (d) The term "commissioner" means commissioner of
23 labor or his designated representative.

24 (e) The term "railroad company" includes any firm or
25 corporation engaged primarily in the business of
26 transportation by rail.

27 (f) The term "special agreement" means an arrange-
28 ment filed with and approved by the commissioner
29 whereby a person, firm or corporation is permitted upon
30 a compelling showing of good cause to establish regular
31 paydays less frequently than once in every two weeks:
32 *Provided*, That in no event shall the employee be paid
33 in full less frequently than once each calendar month on
34 a regularly established schedule.

35 (g) The term "deductions" includes amounts required
36 by law to be withheld, and amounts authorized for union
37 or club dues, pension plans, payroll savings plans, credit
38 unions, charities and hospitalization and medical
39 insurance.

40 (h) The term "officer" shall include officers or agents
41 in the management of a corporation or firm, who
42 knowingly permit the corporation or firm to violate the
43 provisions of this article.

44 (i) The term "wages due" shall include at least all
45 wages earned up to and including the fifth day imme-
46 diately preceding the regular payday.

47 (j) The term "construction" means the furnishing of
48 work in the fulfillment of a contract for the construction,
49 alteration, decoration, painting or improvement of a new
50 or existing building, structure, roadway or pipeline, or
51 any part thereof, or for the alteration, improvement or
52 development of real property: *Provided*, That construc-
53 tion performed for the owner or lessee of a single family
54 dwelling or a family farming enterprise is excluded.

55 (k) The term "minerals" means clay, coal, flagstone,
56 gravel, limestone, manganese, sand, sandstone, shale,
57 iron ore and any other metallurgical ore.

58 (l) The term "fringe benefits" means any benefit
59 provided an employee or group of employees by an
60 employer, or which is required by law, and includes
61 regular vacation, graduated vacation, floating vacation,
62 holidays, sick leave, personal leave, production incentive
63 bonuses, sickness and accident benefits and benefits
64 relating to medical and pension coverage.

65 (m) The term "employer" means any person, firm or
66 corporation employing any employee.

67 (n) The term "doing business in this state" means
68 having employees actively engaged in the intended
69 principal activity of the person, firm or corporation in
70 West Virginia.

§21-5-14. Employer's bond for wages and benefits.

1 (a) *Bond required.* — With the exception of those who
2 have been doing business in this state for at least five
3 consecutive years, every employer, person, firm or
4 corporation engaged in or about to engage in construc-
5 tion work, or the severance, production or transportation
6 (excluding railroads and water transporters) of miner-
7 als, shall, prior to engaging in any construction work,
8 or the severance, production or transportation of
9 minerals, furnish a bond on a form prescribed by the
10 commissioner, payable to the state of West Virginia,
11 with the condition that the person, firm or corporation
12 pay the wages and fringe benefits of his or its employees
13 when due. The amount of the bond shall be equal to the
14 total of the employer's gross payroll for four weeks at
15 full capacity or production, plus fifteen percent of the
16 said total of employer's gross payroll for four weeks at
17 full capacity or production. The amount of the bond
18 shall increase or decrease as the employer's payroll
19 increases or decreases: *Provided*, That the amount of the
20 bond shall not be decreased, except with the commis-
21 sioner's approval and determination that there are not
22 outstanding claims against the bond.

23 (b) *Waiver.* — The commissioner shall waive the
24 posting of any bond required by subsection (a) of this
25 section upon his determination that an employer is of
26 sufficient financial responsibility to pay wages and

27 fringe benefits. The commissioner shall promulgate
28 rules and regulations according to the provisions of
29 chapter twenty-nine-a of this code which prescribe
30 standards for the granting of such waivers.

31 (c) *Form of bond; filing in office of circuit clerk.* — The
32 bond may include, with the approval of the commis-
33 sioner, surety bonding, collateral bonding (including
34 cash and securities), letters of credit, establishment of
35 an escrow account or a combination of these methods.
36 If collateral bonding is used, the employer may deposit
37 cash, or collateral securities or certificates as follows:
38 Bonds of the United States or its possessions, or of the
39 federal land bank, or of the homeowner's loan corpora-
40 tion; full faith and credit general obligation bonds of the
41 state of West Virginia or other states, and of any county,
42 district or municipality of the state of West Virginia or
43 other states; or certificates of deposit in a bank in this
44 state, which certificates shall be in favor of the state.
45 The cash deposit or market value of such securities or
46 certificates shall be equal to or greater than the sum of
47 the bond. The commissioner shall, upon receipt of any
48 such deposit of cash, securities or certificates, promptly
49 place the same with the state treasurer whose duty it
50 shall be to receive and hold the same in the name of the
51 state in trust for the purpose for which such deposit is
52 made. The employer making the deposit shall be entitled
53 from time to time to receive from the state treasurer,
54 upon the written approval of the commissioner, the
55 whole or any portion of any cash, securities or certifi-
56 cates so deposited, upon depositing with him in lieu
57 thereof, cash or other securities or certificates of the
58 classes herein specified having value equal to or greater
59 than the sum of the bond. The commissioner shall cause
60 a copy of the bond to be filed in the office of the clerk
61 of the county commission of the county wherein the
62 person, firm or corporation is doing business to be
63 available for public inspection.

64 (d) *Employee cause of action.* — Notwithstanding any
65 other provision in this article, any employee, whose
66 wages and fringe benefits are secured by the bond, as
67 specified in subsection (c) of this section, has a direct

68 cause of action against the bond for wages and fringe
69 benefits that are due and unpaid.

70 (e) *Action of commissioner.* — Any employee having
71 wages and fringe benefits unpaid, may inform the
72 commissioner of the claim for unpaid wages and fringe
73 benefits and request certification thereof. If the commis-
74 sioner, upon notice to the employer and investigation,
75 finds that such wages and fringe benefits or a portion
76 thereof are unpaid, he shall make demand of such
77 employer for the payment of such wages and fringe
78 benefits. If payment for such wages and fringe benefits
79 is not forthcoming within the time specified by the
80 commissioner, not to exceed thirty days, the commis-
81 sioner shall certify such claim or portion thereof, and
82 forward the certification to the bonding company or the
83 state treasurer, who shall provide payment to the
84 affected employee within fourteen days of receipt of
85 such certification. The bonding company, or any person,
86 firm or corporation posting a bond, thereafter shall have
87 the right to proceed against a defaulting employer for
88 that part of the claim the employee paid. The procedure
89 specified herein shall not be construed to preclude other
90 actions by the commissioner or employee to seek
91 enforcement of the provisions of this article by any civil
92 proceedings for the payment of wages and fringe
93 benefits or by criminal proceedings as may be deemed
94 appropriate.

95 (f) *Posting and reporting by employer.* — With the
96 exception of those exempt under subsection (a) of this
97 section, any employer who is engaged in construction
98 work or the severance, production or transportation
99 (excluding railroad and water transporters) of minerals
100 shall post the following in a place accessible to his or
101 its employees:

102 (1) A copy of the bond or other evidence of surety
103 specifying the number of employees covered as provided
104 under subsection (a) of this section, or notification that
105 the posting of a bond has been waived by the commis-
106 sioner; and

107 (2) A copy of the notice in the form prescribed by the

108 commissioner regarding the duties of employers under
109 this section. During the first two years that any person,
110 firm or corporation is doing business in this state in
111 construction work, or in the severance, production or
112 transportation of minerals, such person, firm or corpo-
113 ration shall on or before the first day of February, May,
114 August and November of each calendar year file with
115 the department a verified statement of the number of
116 employees, or a copy of the quarterly premium report
117 filed with the workers' compensation fund showing the
118 accurate number of employees, unless the commissioner
119 waives the filing of the report upon his determination
120 that the person, firm or corporation is of sufficient
121 stability that the reporting is unnecessary.

122 (g) *Termination of bond.* — The bond may be termi-
123 nated, with the approval of the commissioner, after an
124 employer submits a statement, under oath or affirma-
125 tion lawfully administered, to the commissioner that the
126 following has occurred: The employer has ceased doing
127 business and all wages and fringe benefits have been
128 paid, or the employer has been doing business in this
129 state for at least five consecutive years and has paid all
130 wages and fringe benefits. The approval of the commis-
131 sioner will be granted only after the commissioner has
132 determined that the wages and fringe benefits of all
133 employees have been paid. The bond may also be
134 terminated upon a determination by the commissioner
135 that an employer is of sufficient financial responsibility
136 to pay wages and fringe benefits.

§21-5-15. Violations; criminal penalties.

1 (a) Any person, firm or corporation who knowingly
2 and willfully fails to provide and maintain an adequate
3 bond as required by section fourteen of this article is
4 guilty of a misdemeanor, and, upon conviction thereof,
5 shall be fined not less than two hundred dollars nor
6 more than five thousand dollars, or imprisoned in the
7 county jail not more than one month, or both fined and
8 imprisoned.

9 (b) Any person, firm or corporation who knowingly,
10 willfully and fraudulently disposes of or relocates assets

11 with intent to deprive employees of their wages and
12 fringe benefits is guilty of a felony, and, upon conviction
13 thereof, shall be fined not less than five thousand dollars
14 nor more than thirty thousand dollars, or imprisoned in
15 the penitentiary not less than one nor more than three
16 years, or both fined and imprisoned.

17 (c) At any time the commissioner determines that a
18 person, firm or corporation has not provided or main-
19 tained an adequate bond, as required by section fourteen
20 of this article, the commissioner shall cause a cease and
21 desist order to be issued and posted requiring that said
22 person, firm or corporation either post an adequate bond
23 or cease further operations in this state within a period
24 specified by the commissioner of not less than five nor
25 more than fourteen days. Any person, firm or corpora-
26 tion who continues to engage in construction work or the
27 severance, production or transportation of minerals
28 without an approved bond after specified period shall be
29 guilty of a felony, and, upon conviction thereof, shall be
30 fined not less than five thousand dollars nor more than
31 thirty thousand dollars, or imprisoned in the peniten-
32 tiary not less than one nor more than three years, or
33 both fined and imprisoned.

**§21-5-16. Contractors and subcontractors to notify
commissioner.**

1 Whenever a person, firm or corporation (hereinafter
2 referred to in this section as "the prime contractor")
3 contracts or subcontracts with an employer and such
4 contract or subcontract contemplates the performance of
5 either construction work or the severance, production or
6 transportation (excluding railroads or water transpor-
7 ters) of minerals or any combination of the foregoing,
8 then the prime contractor shall, within ten days next
9 following the execution of such contract or subcontract,
10 notify the commissioner in writing by certified mail,
11 return receipt requested, of such contract, which notice
12 shall include the employee's name, the location of the job
13 site and the employer's principal business location:
14 *Provided*, That if it is ascertained by the prime
15 contractor from the commissioner that the commissioner
16 has obtained the information required to be included in

17 such notice from another agency of this state, then the
18 filing of such notice by the prime contractor shall not
19 be required. If the prime contractor is a firm, corpora-
20 tion or association, then any and all of the officers of
21 such firm, corporation or association shall be responsible
22 to see to the proper notification required by this section.
23 If any prime contractor fails to give the notice required
24 by this section when required to do so, such prime
25 contractor is guilty of a misdemeanor, and, upon
26 conviction thereof, shall be fined not less than five
27 hundred dollars nor more than five thousand dollars.

CHAPTER 22A. MINES AND MINERALS.

ARTICLE 3. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

§22A-3-7. Notice of intention to prospect, requirements therefor; bonding; commissioner's authority to deny or limit; postponement of reclamation; prohibited acts; exceptions.

1 (a) Any person intending to prospect for coal in an
2 area not covered by a surface-mining permit, in order
3 to determine the location, quantity or quality of a
4 natural coal deposit, making feasibility studies or for
5 any other purpose, shall file with the commissioner, at
6 least fifteen days prior to commencement of any
7 disturbance associated with prospecting, a notice of
8 intention to prospect, which notice shall include a
9 description of the prospecting area, the period of
10 supposed prospecting and such other information as
11 required by rules or regulations promulgated pursuant
12 to this section: *Provided*, That prior to the commence-
13 ment of such prospecting, the commissioner may issue
14 an order denying or limiting permission to prospect
15 where he finds that prospecting operations will damage
16 or destroy a unique natural area, or will cause serious
17 harm to water quality, or that the operator has failed
18 to satisfactorily reclaim other prospecting sites, or that
19 there has been an abuse of prospecting by previous
20 prospecting operations in the area.

21 (b) Notice of intention to prospect shall be made in
22 writing on forms prescribed by the commissioner and

23 shall be signed and verified by the applicant. The notice
24 shall be accompanied by (1) a United States geological
25 survey topographic map showing by proper marking the
26 crop line and the name, where known, of the seam or
27 seams to be prospected, and (2) a bond, or cash, or
28 collateral securities or certificates of the same type and
29 form and in the same manner as provided in section
30 eleven of this article, in the amount of five hundred
31 dollars per acre or fraction thereof for the total
32 estimated disturbed area. If such bond is used, it shall
33 be payable to the state of West Virginia and conditioned
34 that the operator shall faithfully perform the require-
35 ments of this article as they relate to backfilling and
36 revegetation of the disturbed area.

37 (c) Any person prospecting under the provisions of
38 this section shall ensure that such prospecting operation
39 is conducted in accordance with the performance
40 standards in section twelve of this article for all lands
41 disturbed in explorations, including excavations, roads,
42 drill holes, and the removal of necessary facilities and
43 equipment.

44 (d) Information submitted to the commissioner pursu-
45 ant to this section as confidential, concerning trade
46 secrets or privileged commercial or financial informa-
47 tion, which relates to the competitive rights of the
48 person or entity intended to prospect the described area,
49 shall not be available for public examination.

50 (e) Any person who conducts any prospecting activi-
51 ties which substantially disturb the natural land surface
52 in violation of this section or regulations issued pursuant
53 thereto shall be subject to the provisions of sections
54 sixteen and seventeen of this article.

55 (f) No operator shall remove more than two hundred
56 and fifty tons of coal without the specific written
57 approval of the commissioner, which may be granted
58 only after the commissioner has ascertained compliance
59 pursuant to subsection (g), section eight of this article.

60 (g) The bond accompanying said notice of intention to
61 prospect shall be released by the commissioner when the
62 operator demonstrates that a permanent species of
63 vegetative cover is established.

64 (h) In the event an operator desires to mine the area
 65 currently being prospected, and has requested and
 66 received an appropriate surface mine application
 67 (S.M.A.) number, the commissioner may permit the
 68 postponement of the reclamation of the area prospected.
 69 Any part of a prospecting operation, where reclamation
 70 has not been postponed as provided above, shall be
 71 reclaimed within a period of three months from
 72 disturbance.

73 (i) For the purpose of this section, the word "prospect"
 74 or "prospecting" does not include core drilling related
 75 solely to taxation or highway construction.

CHAPTER 74

(S. B. 218—By Senators Chernenko, Manchin, Harman, Warner, Whitlow,
 Jarrell, Wolfe and Boley)

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

AN ACT to amend article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen, relating to employers prohibited from discharging employees for time lost as volunteer firemen; civil penalty; limitations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-17. Employers prohibited from discharging employees for time lost as volunteer firemen.

1 No employer may terminate an employee who is a
 2 member of a volunteer fire department and who, in the
 3 line of emergency duty as a volunteer fireman, responds
 4 to an emergency call prior to the time he is due to report
 5 for work and which emergency results in a loss of time
 6 from his employment.

7 Any time lost from employment as provided in this
8 section may be charged against the employee's regular
9 pay.

10 At the request of an employer, any employee losing
11 time as provided herein shall supply his employer with
12 a statement from the chief of the volunteer fire
13 department stating that the employee responded to an
14 emergency call and the time thereof.

15 As used in this section, "emergency" shall mean going
16 to or coming from an actual fire to prevent the
17 imminent loss of life or property. The term "employer"
18 includes any individual, partnership, association,
19 corporation, business trust or any person or group of
20 persons acting directly or indirectly in the interest of an
21 employer in relation to any employee.

22 Any employer who willfully and knowingly violates
23 the provisions of this section shall be required to
24 reinstate such employee to his former position and shall
25 be required to pay such employee all lost wages and
26 benefits for the period between termination and rein-
27 statement. Any action to enforce the provisions of this
28 section shall be commenced within a period of one year
29 after the date of violation and such action shall be
30 commenced in the circuit court of the county wherein
31 the place of employment is located.

*CHAPTER 75

(S. B. 748—Originating in the Senate Committee on the Judiciary)

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

AN ACT to amend and reenact sections fifteen and fifteen-a, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section fifteen-b; to amend and reenact sections eleven (one-a) (one), eleven (ten) (five), sixteen (one) (seven), seventeen-a (two) (nine), nineteen (sixteen-b) (four), twenty (one) (seven), twenty (five-a) (three), twenty (five-c) (six), twenty (five-e) (six),

*Clerk's Note: The provisions contained in this act were subsequently amended by S. B. 761, (Ch. 76) which passed May 13, 1987.

twenty-seven (nine) (one), twenty-seven (seventeen) (three), twenty-nine (three) (five), thirty (six) (three) and thirty-three (two) (ten), article two, chapter sixty-four of said code; and that said article be further amended by adding thereto twenty-two new sections, designated sections five-e (one) (five), eleven (one-a) (twenty-nine-a), eleven (twelve) (twenty-four), sixteen (three-a) (two), sixteen (five) (three), sixteen (five-b) (eight), sixteen (twenty-nine-a) (five), nineteen (one-a) (three), nineteen (one-a) (four), twenty (two) (twelve), twenty (two) (twenty-three-a), twenty (five) (five), twenty-two (one) (thirteen), twenty-two (one) (sixteen), twenty-two (nine) (six), twenty-two-a (three) (forty), twenty-nine (six) (ten), thirty (seven-a) (five), thirty-one-a (eight-b) (five), thirty-three (thirty) (fifteen), forty-six-a (six) (one hundred three) and forty-six-a (seven) (one hundred two), all relating generally to the promulgation of administrative rules and regulations by the various executive or administrative agencies and the procedures relating thereto; providing that emergency rules promulgated by the secretary of state be reviewed by and may be disapproved by the attorney general; the legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of such agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of such agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of such agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; directing certain of such agencies to promulgate certain legislative rules filed in the office of the secretary of state during the regular session of the Legislature held in the year one thousand nine hundred eighty-seven; authorizing the West Virginia industrial and trade jobs development corporation to promulgate certain legislative rules relating to the general administration of the West Virginia capital company act and to the establishment of application procedures to implement the act as modified; authorizing the state tax

commissioner to promulgate certain legislative rules relating to a listing of interests in natural resources for the first statewide reappraisal and providing for penalties; authorizing the state tax commissioner to promulgate certain legislative rules relating to the review of appraisals by county commissions sitting as administrative appraisal review boards as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to review of reappraisals by a circuit court on certiorari as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to the administrative review of appeals by the state tax commissioner as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to the additional review and implementation of property reappraisals as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to providing guidelines for assessors to assure fair and uniform property values; authorizing the state tax commissioner to promulgate certain legislative rules relating to business and occupation taxes as modified; authorizing the state tax commissioner to promulgate certain legislative rules governing the registration of transient vendors as modified; authorizing the state board of health to promulgate certain legislative rules relating to establishing methods and standards for chemical tests for intoxication as modified; authorizing the director of the department of health to promulgate certain legislative rules governing the hazardous material treatment information repository as modified; authorizing the state board of health to promulgate certain legislative rules relating to vital statistics as modified; authorizing the state board of health to promulgate certain legislative rules governing hospital licensure and relating to allowing hospitals to have licensed health care professionals, other than licensed physicians, on their staff, as modified; authorizing the state board of health to promulgate certain legislative rules governing hospital licensure as modified; authorizing the West Virginia hospital finance authority to promulgate certain legislative rules governing the

establishment of fee schedule and cost allocation applicable to issuance of bonds by West Virginia hospital finance authority as modified; authorizing the commissioner of motor vehicles to promulgate certain legislative rules relating to the seizure of a driver's license and the issuance of a temporary driver's license as modified; authorizing the commissioner of motor vehicles to promulgate certain legislative rules relating to a federal safety standards inspection program as modified; authorizing the commissioner of agriculture to promulgate certain legislative rules relating to ginseng as modified; authorizing the commissioner of agriculture to promulgate certain legislative rules relating to the West Virginia pesticide use and application act as modified; authorizing the director of the department of natural resources to promulgate certain legislative rules relating to the WV/NPDES program for coal mines and preparation plants and the refuse and waste therefrom with certain amendments thereto; authorizing the director of the department of natural resources to promulgate certain legislative rules relating to procedures for transporting and dealing in furbearing animals; authorizing the commercial whitewater advisory board to promulgate certain legislative rules relating to commercial whitewater outfitters as modified; authorizing the water resources board to promulgate certain legislative rules relating to water quality standards as modified; authorizing the water resources board to promulgate certain legislative rules relating to the state national pollutant discharge elimination system (NPDES) program as modified; authorizing the water resources board to promulgate certain legislative rules relating to special regulations; authorizing the water resources board to promulgate certain legislative rules relating to the underground injection control program; authorizing the water development authority to promulgate certain legislative rules relating to requirements governing disbursement of loans and grants to governmental agencies for the acquisition or construction of water development projects; authorizing the director of the department of natural resources to promulgate certain legislative rules

relating to hazardous waste management as modified; authorizing the director of the department of natural resources to promulgate certain legislative rules relating to hazardous waste management; authorizing the director of the department of natural resources to promulgate certain legislative rules relating to hazardous waste management which were filed in the state register on the fifth day of March, one thousand nine hundred eighty-seven, which rules modify the previously filed rules entitled "Hazardous Waste Management, Series 35"; authorizing the director of the division of oil and gas of the department of energy to promulgate certain legislative rules governing oil and gas wells and other wells as modified; authorizing the director of the division of oil and gas of the department of energy to promulgate certain legislative rules governing certification of gas wells; authorizing the director of the division of oil and gas of the department of energy to promulgate certain legislative rules governing underground injection control as modified; authorizing the director of the division of oil and gas of the department of energy to promulgate certain legislative rules governing the state national pollutant discharge elimination system (NPDES) program as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing miscellaneous water pollution control; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing dam control as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing solid waste management as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing hazardous waste management as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing the state national pollutant discharge elimination system (NPDES) for mines and minerals as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules relating to the standards for certification of coal

mine electricians as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing the safety training program for prospective underground coal miners in West Virginia; authorizing the commissioner of the department of energy to promulgate legislative rules governing the safety training program for prospective surface coal miners in West Virginia; authorizing the state board of health to promulgate certain legislative rules relating to the licensure of behavioral health centers as modified; authorizing the state fire commission to promulgate certain legislative rules relating to the hazardous substance emergency response training program as modified; authorizing the civil service commission to promulgate certain legislative rules governing the civil service system as modified; authorizing the West Virginia board of embalmers and funeral directors to promulgate certain legislative rules relating to the governing of the board of embalmers and funeral directors as modified; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate certain legislative rules governing policies relating to licensure of the licensed practical nurse as modified; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate certain legislative rules governing legal standards of nursing practice for the licensed practical nurse; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate certain legislative rules governing fees for services rendered by the board; authorizing the commissioner of banking to promulgate certain legislative rules implementing the West Virginia community reinvestment act as modified; authorizing the insurance commissioner to promulgate certain legislative rules relating to examiners' compensation, qualification and classification as modified; authorizing the state board of risk and insurance management to promulgate certain legislative rules governing the mine subsidence insurance program as modified; authorizing the attorney general to promulgate certain legislative rules relating to the prevention of unfair or deceptive acts or practices in home

improvement and home construction transactions as modified; and authorizing the attorney general to promulgate certain legislative rules relating to the prevention of unfair or deceptive acts or practices in the sale of damaged goods or products as modified.

Be it enacted by the Legislature of West Virginia:

That sections fifteen and fifteen-a, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article three be further amended by adding thereto a new section, designated section fifteen-b; that sections eleven (one-a) (one), eleven (ten) (five), sixteen (one) (seven), seventeen-a (two) (nine), nineteen (sixteen-b) (four), twenty (one) (seven), twenty (five-a) (three), twenty (five-c) (six), twenty (five-e) (six), twenty-seven (nine) (one), twenty-seven (seventeen) (three), twenty-nine (three) (five), thirty (six) (three) and thirty-three (two) (ten), article two, chapter sixty-four of said code, as amended, be amended and reenacted; and that said article two be further amended by adding thereto twenty-two new sections, designated sections five-e (one) (five), eleven (one-a) (twenty-nine-a), eleven (twelve) (twenty-four), sixteen (three-a) (two), sixteen (five) (three), sixteen (five-b) (eight), sixteen (twenty-nine-a) (five), nineteen (one-a) (three), nineteen (one-a) (four), twenty (two) (twelve), twenty (two) (twenty-three-a), twenty (five) (five), twenty-two (one) (thirteen), twenty-two (one) (sixteen), twenty-two (nine) (six), twenty-two-a (three) (forty), twenty-nine (six) (ten), thirty (seven-a) (five), thirty-one-a (eight-b) (five), thirty-three (thirty) (fifteen), forty-six-a (six) (one hundred three) and forty-six-a (seven) (one hundred two), all to read as follows:

Chapter

29A. State Administrative Procedures.

64. Legislative Rules.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES.

ARTICLE 3. RULE MAKING.

§29A-3-15. Emergency legislative rules; procedures for promulgation; definition.

§29A-3-15a. Disapproval of emergency rules by the secretary of state; judicial review.

§29A-3-15b. Disapproval of emergency rules by the attorney general; judicial review.

§29A-3-15. Emergency legislative rules; procedure for promulgation; definition.

1 (a) Any agency with authority to propose legislative
2 rules may, without hearing, find that an emergency
3 exists requiring that emergency rules be promulgated
4 and promulgate the same in accordance with this
5 section. Such emergency rules, together with a state-
6 ment of the facts and circumstances constituting the
7 emergency, shall be filed in the state register and shall
8 become effective immediately upon such filing. Such
9 emergency rules may adopt, amend or repeal any
10 legislative rule, but the circumstances constituting the
11 emergency requiring such adoption, amendment or
12 repeal shall be stated with particularity and be subject
13 to de novo review by any court having original jurisdic-
14 tion of an action challenging their validity. Fifteen
15 copies of the rules and of the required statement shall
16 be filed forthwith with the legislative rule-making
17 review committee.

18 An emergency rule shall be effective for not more
19 than fifteen months and shall expire earlier if any of the
20 following occurs:

21 (1) The secretary of state, acting under the authority
22 provided for in section fifteen-a of this article, or the
23 attorney general, acting under the authority provided
24 for in section fifteen-b of this article, disapproves the
25 emergency rule because (A) the agency has exceeded the
26 scope of its statutory authority in promulgating the
27 emergency rule; (B) an emergency does not exist
28 justifying the promulgation of such rule; or (C) the rule
29 was not promulgated in compliance with the provisions
30 of this section.

31 (2) The agency has not previously filed and fails to file
32 a notice of public hearing on the proposed rule within
33 sixty days of the date the proposed rule was filed as an
34 emergency rule; in which case the emergency rule
35 expires on the sixty-first day.

36 (3) The agency has not previously filed and fails to file
37 the proposed rule with the legislative rule-making
38 review committee within one hundred eighty days of the

39 date the proposed rule was filed as an emergency rule;
40 in which case the emergency rule expires on the one
41 hundred eighty-first day.

42 (4) The Legislature has authorized or directed pro-
43 mulgation of an authorized legislative rule dealing with
44 substantially the same subject matter since such
45 emergency rule was first promulgated, and in which
46 case the emergency rule expires on the date the
47 authorized rule is made effective.

48 (5) The Legislature has, by law, disapproved of such
49 emergency rule; in which case the emergency rule
50 expires on the date the law becomes effective.

51 (b) Any amendment to an emergency rule made by
52 the agency shall be filed in the state register and does
53 not constitute a new emergency rule for the purpose of
54 acquiring additional time or avoiding the expiration
55 dates in subdivision (1), (2), (3) or (4), subsection (a) of
56 this section.

57 (c) Once an emergency rule expires due to the
58 conclusion of fifteen months or due to the effect of
59 subdivision (1), (2), (3) or (4), subsection (a) of this
60 section, the agency may not refile the same or similar
61 rule as an emergency rule.

62 (d) Emergency legislative rules currently in effect
63 under the prior provisions of this section may be refiled
64 under the provisions of this section.

65 (e) The provision of this section shall not be used to
66 avoid or evade any provision of this article or any other
67 provisions of this code, including any provisions for
68 legislative review and approval of proposed rules. Any
69 emergency rule promulgated for any such purpose may
70 be contested in a judicial proceeding before a court of
71 competent jurisdiction.

72 (f) The legislative rule-making review committee
73 may review any emergency rule to determine (1)
74 whether the agency has exceeded the scope of its
75 statutory authority in promulgating the emergency rule;
76 (2) whether there exists an emergency justifying the
77 promulgation of such rule; and (3) whether the rule was

78 promulgated in compliance with the requirements and
79 prohibitions contained in this section. The committee
80 may recommend to the agency, the Legislature, or the
81 secretary of state such action as it may deem proper.

82 (g) For the purposes of this section, an emergency
83 exists when the promulgation of a rule is necessary for
84 the immediate preservation of the public peace, health,
85 safety or welfare or is necessary to comply with a time
86 limitation established by this code or by a federal statute
87 or regulation or to prevent substantial harm to the
88 public interest.

**§29A-3-15a. Disapproval of emergency rules by the
secretary of state; judicial review.**

1 (a) Upon the filing of an emergency rule by an
2 agency, under the provisions of section fifteen of this
3 article, by any agency, except for the secretary of state,
4 the secretary of state shall review such rule and, within
5 forty-two days of such filing, shall issue a decision as to
6 whether or not such emergency rule should be disap-
7 proved. An emergency rule filed by the secretary of
8 state shall be reviewed by the attorney general as
9 provided for in section fifteen-b of this article.

10 (b) The secretary of state shall disapprove an emer-
11 gency rule if he determines:

12 (1) That the agency has exceeded the scope of its
13 statutory authority in promulgating the emergency rule;

14 (2) That an emergency does not exist justifying the
15 promulgation of the rule; or

16 (3) That the rule was not promulgated in compliance
17 with the provisions of section fifteen of this article.

18 (c) If the secretary of state determines, based upon the
19 contents of the rule or the supporting information filed
20 by the agency, that the emergency rule should be
21 disapproved, he may disapprove such rule without
22 further investigation, notice or hearing. If, however, the
23 secretary of state concludes that the information
24 submitted by the agency is insufficient to allow a proper
25 determination to be made as to whether the emergency

26 rule should be disapproved, he may make further
27 investigation, including, but not limited to, requiring
28 the agency or other interested parties to submit
29 additional information or comment or fixing a date,
30 time and place for the taking of evidence on the issues
31 involved in making a determination under the provi-
32 sions of this section.

33 (d) The determination of the secretary of state shall
34 be reviewable by the supreme court of appeals under its
35 original jurisdiction, based upon a petition for a writ of
36 mandamus, prohibition or certiorari, as appropriate.
37 Such proceeding may be instituted by:

38 (1) The agency which promulgated the emergency
39 rule;

40 (2) A member of the Legislature; or

41 (3) Any person whose personal property interests will
42 be significantly affected by the approval or disapproval
43 of the emergency rule by the secretary of state.

**§29A-3-15b. Disapproval of emergency rules by the
attorney general; judicial review.**

1 (a) Upon the filing of an emergency rule by the
2 secretary of state under the provisions of section fifteen
3 of this article, the attorney general shall review such
4 rule and, within forty-two days of such filing, shall issue
5 a decision as to whether or not such emergency rule
6 should be disapproved.

7 (b) The attorney general shall disapprove an emer-
8 gency rule if he determines:

9 (1) That the secretary of state has exceeded the scope
10 of its statutory authority in promulgating the emer-
11 gency rule;

12 (2) That an emergency does not exist justifying the
13 promulgation of the rule; or

14 (3) That the rule was not promulgated in compliance
15 with the provisions of section fifteen of this article.

16 (c) If the attorney general determines, based upon the
17 contents of the rule or the supporting information filed

18 by the secretary of state, that the emergency rule should
 19 be disapproved, he may disapprove such rule without
 20 further investigation, notice or hearing. If, however, the
 21 attorney general concludes that the information submit-
 22 ted by the secretary of state is insufficient to allow a
 23 proper determination to be made as to whether the
 24 emergency rule should be disapproved, he may make
 25 further investigation, including, but not limited to,
 26 requiring the secretary of state or other interested
 27 parties to submit additional information or comment or
 28 fixing a date, time and place for the taking of evidence
 29 on the issues involved in making a determination under
 30 the provisions of this section.

31 (d) The determination of the attorney general shall be
 32 reviewable by the supreme court of appeals under its
 33 original jurisdiction, based upon a petition for a writ of
 34 mandamus, prohibition or certiorari, as appropriate.
 35 Such proceeding may be instituted by:

36 (1) The secretary of state;

37 (2) A member of the Legislature; or

38 (3) Any person whose personal property interests will
 39 be significantly affected by the approval or disapproval
 40 of the emergency rule by the attorney general.

CHAPTER 64. LEGISLATIVE RULES.

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-5e(1)(5).	West Virginia industrial and trade jobs development corporation.
§64-2-11(1a)(1).	State tax commissioner.
§64-2-11(1a)(29a).	State tax commissioner.
§64-2-11(10)(5).	State tax commissioner.
§64-2-11(12)(24).	State tax commissioner.
§64-2-16(1)(7).	State board of health.
§64-2-16(3a)(2).	Director of health.
§64-2-16(5)(3).	State board of health.
§64-2-16(5b)(8).	State board of health.
§64-2-16(29a)(5).	West Virginia hospital finance authority.
§64-2-17a(2)(9).	Commissioner of motor vehicles.
§64-2-19(1a)(3).	Division of forestry; department of agriculture.
§64-2-19(1a)(4).	Division of forestry; department of agriculture.
§64-2-19(16b)(4).	Commissioner of agriculture.
§64-2-20(1)(7).	Department of natural resources.

§64-2-20(2)(12).	Director of the department of natural resources.
§64-2-20(2)(23a)	Department of natural resources; commercial whitewater advisory board.
§64-2-20(5)(5).	Water resources board.
§64-2-20(5a)(3).	Water resources board.
§64-2-20(5c)(6).	Water development authority.
§64-2-20(5e)(6).	Department of natural resources.
§64-2-22(1)(13).	Department of energy; director of the division of oil and gas.
§64-2-22(1)(16).	Commissioner of the department of energy.
§64-2-22(9)(6).	Commissioner of the department of energy.
§64-2-22a(3)(40).	Commissioner of the department of energy.
§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.
§64-2-29(6)(10).	Civil service commission.
§64-2-30(6)(3).	Board of embalmers and funeral directors.
§64-2-30(7a)(5).	West Virginia board of examiners for licensed practical nurses.
§64-2-31a(8b)(5).	Commissioner of banking.
§64-2-32(2)(10).	Insurance commissioner.
§64-2-33(30)(15).	State board of risk and insurance management.
§64-2-46a(6)(103).	Attorney general.
§64-2-46a(7)(102).	Attorney general.

§64-2-5e(1)(5). West Virginia industrial and trade jobs development corporation.

1 The legislative rules filed in the state register on the
 2 fifteenth day of October, one thousand nine hundred
 3 eighty-six, modified by the West Virginia industrial and
 4 trade jobs development corporation to meet the objec-
 5 tions of the legislative rule-making review committee
 6 and refiled in the state register on the twelfth day of
 7 January, one thousand nine hundred eighty-seven,
 8 relating to the West Virginia industrial and trade jobs
 9 development corporation (general administration of the
 10 West Virginia capital company act and establishment of
 11 application procedures to implement the act), are
 authorized.

§64-2-11(1a)(1). State tax commissioner.

1 (a) The legislative rules filed in the state register on
 2 the twelfth day of March, one thousand nine hundred
 3 eighty-five, relating to the state tax commissioner
 4 (identification and appraisal of farmland subsequent to
 5 the base year of statewide reappraisal) are authorized

6 and directed to be promulgated with the following
7 amendments:

8 Title page, Subject; following the word "Farmland,"
9 insert the words "and of Structures Situated Thereon."

10 Page i, Subject; following the word "Farmland,"
11 insert the words "and of Structures Situated Thereon."

12 Page i, TABLE OF CONTENTS, Section 10; follow-
13 ing the words "Valuation of Farmland" add the words
14 "and of Structures Situated Thereon."

15 Page 10.1, Title; following the word "FARMLAND"
16 insert the words "AND STRUCTURES SITUATED
17 THEREON."

18 Page 10.1, Section 10, Title; following the word
19 "Farmland" add the words "and Structures Situated
20 Thereon."

21 Page 10.1, Section 10.01(b); following the word
22 "farmland" insert the words "and structures situated
23 thereon."

24 Page 10.2, Section 10.02(a), first sentence; following
25 the word "farmland" insert the words "and structures
26 situated thereon."

27 Page 10.3, Section 10.02(b), first sentence; following
28 the word "farmland" insert the words "and structures
29 situated thereon." Delete the words "for purposes of the
30 statewide reappraisal."

31 Page 10.3, Section 10.02(b), last sentence; following
32 the word "farmland" insert the words "and structures
33 situated thereon."

34 Page 10.8, Section 10.04(5)(B), last sentence; delete the
35 period and add "or the incapability to be adapted to
36 alternative uses."

37 Page 10.9, Section 10.04(6), first sentence; following
38 the words "land currently being used" insert the words
39 "as part of a farming operation,".

40 Page 10.9, Section 10.04(6), following the last sent-
41 ence; add the sentence "For the purposes of this

42 definition, 'contiguous tracts' are farmlands which are in
43 close proximity, but not necessarily adjacent: *Provided*,
44 That all such contiguous tracts are operated as part of
45 the same farm management plan."

46 Page 10.10, Section 10.04(8), is amended to read in its
47 entirety as follows:

48 "(8) *Farm buildings*.—The term 'farm buildings' shall
49 mean structures which directly contribute to the
50 operation of the farm, and shall include tenant houses
51 and quarters furnished farm employees without rent as
52 a part of the terms of their employment."

53 Page 10.11, Section 10.04; delete the word "No-
54 vember" and insert in lieu thereof the word "Sep-
55 tember." Delete the period following the word "valua-
56 tion" and add the words "for the assessment year
57 beginning July first of each year."

58 Page 10.11, Section 10.04, insert the following
59 subdivision; "(12) Application Form: The application
60 form required to be filed with the assessor on or before
61 September first of each year shall require certification
62 that the farm complies with criteria set forth in Section
63 10.05(c) of these regulations, and renewal applications
64 from year to year shall be sufficient upon statement
65 certifying that no change has been made in the use of
66 farm property which would disqualify 'farm use'
67 classification for assessment purposes." Renumber the
68 subdivisions of Section 10.04 following the new
69 10.04(12); formerly 10.04(12) through 10.04(28), to
70 10.04(13) through 10.04(29) respectively.

71 Page 10.14, Section 10.04(28) (formerly 10.04(27));
72 following the words "woodland products" insert a
73 comma and the words "such as nuts or fruits harvested"
74 and add a comma following the words "human consump-
75 tion" on Page 10.15.

76 Page 10.16, Section 10.05, subsection (a), following the
77 words "land is used for farm purposes" by striking the
78 period and inserting in lieu thereof a colon and the
79 following: "*Provided*, That the true and actual value of
80 all farms used, occupied and cultivated by their owners

81 or bona fide tenants shall be arrived at according to the
82 fair and reasonable value of the property for the purpose
83 for which it is actually used regardless of what the value
84 of the property would be if used for some other purpose;
85 and that the true and actual value shall be arrived at
86 by giving consideration to the fair and reasonable
87 income which the same might be expected to earn under
88 normal conditions in the locality wherein situated, if
89 rented: *Provided, however,* That nothing herein shall
90 alter the method of assessment of lands or minerals
91 owned by domestic or foreign corporations.”

92 Page 10.16, Section 10.05(b), first clause; following the
93 words “following factors shall be” insert the words
94 “indicative of but not conclusive” and delete the word
95 “considered.”

96 Page 10.16, Section 10.05(b)(2); delete the period and
97 add the words “such as soil conservation, farmland
98 preservation or federal farm lending agencies.”

99 Page 10.17, Section 10.05(b)(7); delete the section and
100 insert in lieu thereof the words “(7) Whether or not the
101 farmer practices ‘custom farming’ on the land in
102 question.”

103 Page 10.17, Section 10.05(b)(9); following the word
104 “type” add a comma and insert the word “utility.”

105 Page 10.17, Section 10.05(b)(11), first sentence;
106 following the word “sales” insert the words “for nonfarm
107 uses.”

108 Page 10.17, Section 10.05(b)(12)(A); following the
109 words “part of” insert the words “or appurtenant to.”

110 Page 10.17, Section 10.05(b)(12)(B); following the
111 words “contiguous to” insert the words “or operated in
112 common with.”

113 Page 10.18, Section 10.05, subsection (c), the first
114 sentence of which is amended in its entirety to read as
115 follows: “Qualifying farmland and the structures
116 situated thereon shall be subject to farm use valuation,
117 with primary consideration being given to the income
118 which the property might be expected to earn, in the
119 locality wherein situate, if rented.”

120 Page 10.18, Section 10.05(b)(12)(B); delete the semicol-
121 ons and the words "it was purchased at the same time
122 as the tract so used." Delete the period following the
123 word "purposes" and add the words "or any nonfarm
124 use."

125 Page 10.19, Section 10.05(c)(2); following the words
126 "Provided, That no" delete the word "reason" and insert
127 in lieu thereof the words "individual event."

128 Page 10.20, Section 10.05(c)(4)(C); following the words
129 "(1,000) minimum production value" insert the words
130 "or the small farm five hundred dollars (\$500) minimum
131 production and sale."

132 Page 10.23, Section 10.05(d)(3)(B), third sentence;
133 following the word "If" insert the words "timber from."
134 Delete the period following the word "purpose" and add
135 the words "or is being converted to farm production
136 uses."

137 Page 10.26, Section 10.05(f)(2) is amended in its
138 entirety to read as follows:

139 "(2) *Farm buildings.*—Rental value of farm buildings
140 and other improvements on the farmland shall be valued
141 by determining the replacement cost of the building or
142 structure by usual farm construction practices, and
143 farm labor standards and subtracting therefrom
144 depreciation.¹ Both of these determinations shall be
145 made in accordance with the tax department's real
146 property appraisal manual² as filed in the state register
147 in accordance with chapter 29A of the code of West
148 Virginia, 1931, as amended, and as it relates to
149 agricultural buildings and structures. One (1) acre of
150 land shall be assigned to all buildings as a unit situate
151 on the property, regardless of the actual acreage
152 occupied by such buildings and shall be appraised at its
153 farm-use valuation based on the highest class of
154 farmland present on the farm."

155 Page 10.28, Section 10.05(f)(3)(B)(1); following the
156 words "or more of the" insert the word "usual."

- 157 Page 10.28, Section 10.05(f)(3)(B)(2); following the
158 words "(50%) of the" insert the word "usual."
- 159 Page 10.29, Section 10.05(f)(3)(C)(1)(a); following the
160 words "(50%) or more of the" insert the word "usual".
- 161 Page 10.29, Section 10.05(f)(3)(C)(1)(b); following the
162 words "(50%) of the" insert the word "usual".
- 163 Page 10.31, Section 10.05(f)(3)(C)(2)(b); following the
164 last sentence insert the sentence "An individual em-
165 ployed other than in farming is not an unincorporated
166 business."
- 167 Page 10.35, Section 10.07, Title; following the word
168 "Farmland" insert the words "and Structures Situated
169 Thereon."
- 170 Page 10.35, Section 10.07(a), first sentence; following
171 the word "farmland" insert the words "and structures
172 situated thereon."
- 173 Page 10.46, Subject; following the word "Farmland"
174 insert the words "and Structures Situated Thereon."
- 175 (b) The legislative rules filed in the state register on
176 the twenty-sixth day of March, one thousand nine
177 hundred eighty-six, relating to the state tax commis-
178 sioner (listing of interests in natural resources for the
179 first statewide reappraisal; provision for penalties) are
180 authorized.
- 181 (c) The legislative rules filed in the state register on
182 the twenty-sixth day of March, one thousand nine
183 hundred eighty-six, modified by the state tax commis-
184 sioner to meet the objections of the legislative rule-
185 making review committee and refiled in the state
186 register on the twelfth day of February, one thousand
187 nine hundred eighty-seven, relating to the state tax
188 commissioner (review of appraisals by county commis-
189 sions sitting as administrative appraisal review boards),
190 are authorized.
- 191 (d) The legislative rules filed in the state register on
192 the twenty-sixth day of March, one thousand nine
193 hundred eighty-six, modified by the state tax commis-
194 sioner to meet the objections of the legislative rule-

195 making review committee and refiled in the state
196 register on the twelfth day of February, one thousand
197 nine hundred eighty-seven, relating to the state tax
198 commissioner (review of appraisals by a circuit court on
199 certiorari), are authorized with the following
200 amendment:

201 On page 3, §18.3.1 is stricken in its entirety and a new
202 §18.3.1 is inserted in lieu thereof to read as follows:

203 “18.3.1 *Who May Request Review.*—The property
204 owner, Tax Commissioner, protestor or intervenor may
205 request the county commission to certify the evidence
206 and remove and return the record to the circuit court
207 of the county on a writ of certiorari. Parties to the
208 proceeding wherein review by the circuit court is sought
209 shall pay costs and fees as they are incurred: *Provided,*
210 That the circuit court upon rendering judgment or
211 making any order may award costs to any party in
212 accordance with the provisions of W. Va. Code §53-3-5.”

213 (e) The legislative rules filed in the state register on
214 the twenty-sixth day of March, one thousand nine
215 hundred eighty-six, modified by the state tax commis-
216 sioner to meet the objections of the legislative rule-
217 making review committee and refiled in the state
218 register on the twelfth day of February, one thousand
219 nine hundred eighty-seven, relating to the state tax
220 commissioner (administrative review of appraisals by
221 the state tax commissioner), are authorized.

222 (f) The legislative rules filed in the state register on
223 the eighteenth day of August, one thousand nine
224 hundred eighty-six, modified by the state tax commis-
225 sioner to meet the objections of the legislative rule-
226 making review committee and refiled in the state
227 register on the twelfth day of February, one thousand
228 nine hundred eighty-seven, relating to the state tax
229 commissioner (additional review and implementation of
230 property appraisals), are authorized.

§64-2-11(1a)(29a). State tax commissioner.

1 The legislative rules filed in the state register on the
2 eleventh day of August, one thousand nine hundred

3 eighty-six, relating to the state tax commissioner
4 (guidelines for assessors to assure fair and uniform
5 personal property values) are authorized.

§64-2-11(10)(5). State tax commissioner.

1 (a) The legislative rules filed in the state register on
2 the twenty-eighth day of September, one thousand nine
3 hundred eighty-four, relating to the state tax commis-
4 sioner (estimated personal income tax), are authorized
5 with the amendments set forth below:

6 55.02(a)(2)(on page 182.2) line 18, after the word
7 "profession" strike the words "on his own account" and
8 the comma(,).

9 55.12(b)(1)(page 182.35) at the end of the section,
10 change the period to a comma, and add the following
11 language: "and in the case of a court appointed agent,
12 a copy of the court order of appointment is sufficient."

13 55.12(c)(page 182.36) after the word "for", strike the
14 word "erroneous".

15 (b) The legislative rules filed in the state register on
16 the twenty-eighth day of September, one thousand nine
17 hundred eighty-four, modified by the state tax commis-
18 sioner to meet the objections of the legislative rule-
19 making review committee and refiled in the state
20 register on the fourteenth day of November, one
21 thousand nine hundred eighty-four, and on the twenty-
22 first day of March, one thousand nine hundred eighty-
23 five, relating to the state tax commissioner (estimated
24 corporation net income tax), are authorized.

25 (c) The legislative rules filed in the state register on
26 the fourth day of February, one thousand nine hundred
27 eighty-six, modified by the state tax commissioner to
28 meet the objection of the legislative rule-making review
29 committee and refiled in the state register on the
30 fourteenth day of January, one thousand nine hundred
31 eighty-seven, relating to the state tax commissioner
32 (business and occupation tax) are authorized.

§64-2-11(12)(24). State tax commissioner.

1 The legislative rules filed in the state register on the

2 eighteenth day of August, one thousand nine hundred
3 eighty-six, modified by the state tax commissioner to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the tenth
6 day of December, one thousand nine hundred eighty-six,
7 relating to the state tax commissioner (registration of
8 transient vendors), are authorized.

§64-2-16(1)(7). State board of health.

1 (a) The legislative rules filed in the state register on
2 the second day of June, one thousand nine hundred
3 eighty-two, relating to the state board of health (waste
4 water treatment works operations), are authorized.

5 (b) The legislative rules filed in the state register on
6 the second day of June, one thousand nine hundred
7 eighty-two, relating to the state board of health
8 (laboratory reporting of syphilis and gonorrhea) are
9 authorized.

10 (c) The legislative rules filed in the state register on
11 the second day of June, one thousand nine hundred
12 eighty-two, relating to the state board of health (public
13 water supply operators) with the modification of §11.02
14 as presented to the legislative rule-making review
15 committee on the ninth day of November, one thousand
16 nine hundred eighty-two, are authorized.

17 (d) The legislative rules filed in the state register on
18 the twenty-second day of October, one thousand nine
19 hundred eighty-two, relating to the state board of health
20 (sewage systems) with the modification presented to the
21 legislative rule-making review committee on the sixth
22 day of December, one thousand nine hundred eighty-
23 two, are authorized except lines ten through seventeen,
24 page eight of the rules, shall be stricken in their entirety
25 and the remaining paragraphs renumbered. These rules
26 were proposed by the state board of health pursuant to
27 sections seven and nine, article one, chapter sixteen of
28 this code.

29 (e) The legislative rules filed in the state register on
30 the second day of June, one thousand nine hundred
31 eighty-two, relating to the state board of health

32 (approval of laboratories), are authorized. These rules
33 were proposed by the state board of health pursuant to
34 section one, article seven, chapter sixteen and section
35 six-a, article one, chapter forty-eight of this code.

36 (f) The legislative rules filed in the state register on
37 the thirteenth day of August, one thousand nine hundred
38 eighty-two, and filed with amendments on the eleventh
39 day of January, one thousand nine hundred eighty-three,
40 relating to the state board of health (nursing home
41 licensure), are authorized with the amendment of
42 §5.15.02 of those rules as set forth below:

43 By striking the word "and" at the end of subdivision
44 (f), by changing the period at the end of subdivision (g)
45 to a semicolon, and by adding the following after
46 subdivision (g): "(h) one (1) member who represents
47 social work services."

48 These rules were proposed by the state board of health
49 pursuant to section seven, article one, chapter sixteen
50 and section three, article five-c, chapter sixteen of this
51 code.

52 (g) The legislative rules filed in the state register on
53 the third day of October, one thousand nine hundred
54 eighty-four, relating to the state board of health (trauma
55 center or facility designation), are authorized.

56 (h) The legislative rules filed in the state register on
57 the seventh day of September, one thousand nine
58 hundred eighty-three, relating to the state board of
59 health (well water regulations) are authorized with the
60 amendments set forth below:

61 §4.1. In the first sentence delete the word "obtaining"
62 and insert in lieu thereof the words "applying for." In
63 the second sentence after "4.3" add "and 4.5."

64 §4.2. At the end of the second sentence, strike the
65 period and add the words "unless emergency conditions
66 prevail as noted under §4.3."

67 With the balance of §4.2 and create a new §4.3 with
68 the following changes: In the first sentence delete the
69 word "deadline" and insert in lieu thereof the word

70 "requirements." Add after the first sentence the
71 sentence, "Emergency conditions and unavoidable
72 circumstances are those conditions involving acts of God,
73 water outages or disruption of water service, unsatisfac-
74 tory water quality or quantity or public health threats."
75 In the third sentence delete the word "exceed" and insert
76 in lieu thereof the words "be made in excess of."

77 Renumber §4.3 as §4.4 and add the following two
78 sentences at the end of the section: "Such standards shall
79 constitute the minimum standards for the installation,
80 the alteration or the deepening of water wells. Any plans
81 approved by the director pursuant to these regulations
82 shall be in substantial compliance with the heretofore
83 mentioned standards."

84 Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7, §4.7
85 as §4.8 and §4.8 as §4.9.

86 §5.2. Delete the words "four(4)" and insert in lieu
87 thereof the words "two(2)" and delete the words "active,
88 continuous."

89 (i) The legislative rules filed in the state register on
90 the nineteenth day of December, one thousand nine
91 hundred eighty-three, relating to the state board of
92 health (procedures for recovery of corneal tissue for
93 transplant) are authorized.

94 (j) The legislative rules filed in the state register on
95 the twenty-first day of December, one thousand nine
96 hundred eighty-four, relating to the state board of
97 health (reportable diseases) are authorized.

98 (k) The legislative rules filed in the state register on
99 the third day of October, one thousand nine hundred
100 eighty-four, relating to the state board of health (retail
101 food store sanitation) are authorized.

102 (l) The legislative rules filed in the state register on
103 the seventeenth day of July, one thousand nine hundred
104 eighty-six, modified by the state board of health to meet
105 the objections of the legislative rule-making review
106 committee and refiled in the state register on the
107 sixteenth day of October, one thousand nine hundred
108 eighty-six, relating to the state board of health (methods

109 and standards for chemical tests for intoxication) are
110 authorized.

§64-2-16(3a)(2). Director of health.

1 The legislative rules filed in the state register on the
2 thirteenth day of August, one thousand nine hundred
3 eighty-six, modified by the director of the department
4 of health to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the sixteenth of October, one thousand nine
7 hundred eighty-six, relating to the director of the
8 department of health (hazardous material treatment
9 information repository) are authorized.

§64-2-16(5)(3). State board of health.

1 The legislative rules filed in the state register on the
2 ninth day of December, one thousand nine hundred
3 eighty-six, modified by the state board of health to meet
4 the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 twenty-third day of December, one thousand nine
7 hundred eighty-six, relating to the state board of health
8 (vital statistics) are authorized.

§64-2-16(5b)(8). State board of health.

1 (a) The legislative rules filed in the state register on
2 the eighteenth day of April, one thousand nine hundred
3 eighty-six, modified by the state board of health to meet
4 the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 seventeenth day of October, one thousand nine hundred
7 eighty-six, relating to the state board of health (hospital
8 licensure) are authorized.

9 (b) The legislative rules filed in the state register on
10 the ninth day of December, one thousand nine hundred
11 eighty-six, modified by the state board of health to meet
12 the objections of the legislative rule-making review
13 committee and refiled in the state register on the
14 twenty-third day of December, one thousand nine
15 hundred eighty-six, relating to the state board of health
16 (hospital licensure and allowing hospitals to have
17 licensed hospital professionals, other than licensed
18 physicians, on their medical staff) are authorized.

§64-2-16(29a)(5). West Virginia hospital finance authority.

1 The legislative rules filed in the state register on the
2 tenth day of June, one thousand nine hundred eighty-
3 six, modified by the West Virginia hospital finance
4 authority to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the ninth day of January, one thousand nine
7 hundred eighty-seven, relating to the West Virginia
8 hospital finance authority (establishment of fee schedule
9 and cost allocation applicable to issuance of bonds) are
10 authorized.

§64-2-17a(2)(9). Commissioner of motor vehicles.

1 (a) The legislative rules filed in the state register on
2 the second day of December, one thousand nine hundred
3 eighty-two, relating to the commissioner of motor
4 vehicles (denial of driving privileges), are authorized
5 with the amendments set forth below:

6 By inserting the words "licensed in the United States"
7 after the phrase "physician of the applicant's choice," on
8 page five, line two, and page seven, line one; and by
9 striking out the words "licensed vision specialist" and
10 inserting in lieu thereof the words "an optometrist or
11 ophthalmologist licensed in the United States," on page
12 five, line three, and on page seven, line two. These rules
13 were proposed by the commissioner pursuant to section
14 nine, article two, chapter seventeen-a and section six,
15 article three-c, chapter seventeen-b of this code.

16 (b) The legislative rules filed in the state register on
17 the twentieth day of November, one thousand nine
18 hundred eighty-four, relating to the commissioner of
19 motor vehicles (titling a vehicle), are authorized.

20 (c) The legislative rules filed in the state register on
21 the fifth day of August, one thousand nine hundred
22 eighty-five, modified by the the commissioner of motor
23 vehicles to meet the objections of the legislative rule-
24 making review committee and refiled in the state
25 register on the fourth day of October, one thousand nine

26 hundred eighty-five, relating to the commissioner of
27 motor vehicles (eligibility for reinstatement following
28 suspension or revocation of driving privileges), are
29 authorized.

30 (d) The legislative rules filed in the state register on
31 the twenty-fifth day of July, one thousand nine hundred
32 eighty-six, modified by the commissioner of motor
33 vehicles to meet the objections of the legislative rule-
34 making review committee and refiled in the state
35 register on the ninth day of October, one thousand nine
36 hundred eighty-six, relating to the commissioner of
37 motor vehicles (seizure of a driver's license and issuance
38 of a temporary driver's license), are authorized.

39 (e) The legislative rules filed in the state register on
40 the twenty-fifth day of July, one thousand nine hundred
41 eighty-six, modified by the commissioner of motor
42 vehicles to meet the objections of the legislative rule-
43 making review committee and refiled in the state
44 register on the ninth day of October, one thousand nine
45 hundred eighty-six, relating to the commissioner of
46 motor vehicles (federal safety standards inspection
47 program) are authorized.

**§64-2-19(1a)(3). Division of forestry; department of
agriculture.**

1 The rules authorized by the Legislature in section
2 nineteen (one-a) (four) of this article were also proposed
3 by the commissioner of agriculture pursuant to section
4 three, article one-a, chapter nineteen of this code.

**§64-2-19(1a)(4). Division of forestry; department of
agriculture.**

1 The legislative rules filed in the state register on the
2 eighteenth day of August, one thousand nine hundred
3 eighty-six, modified by the director of the division of
4 forestry of the department of agriculture to meet the
5 objections of the legislative rule-making review commit-
6 tee and refiled in the state register on the fifth day of
7 January, one thousand nine hundred eighty-seven,
8 relating to the director of the division of forestry of the
9 department of agriculture (ginseng), are authorized.

10 These rules were proposed by the director of the division
11 of forestry of the department of agriculture pursuant to
12 sections three and four, article one-a, chapter nineteen
13 of the code.

§64-2-19(16b)(4). Commissioner of agriculture.

1 (a) The legislative rules filed in the state register on
2 the fifth day of January, one thousand nine hundred
3 eighty-four, relating to the commissioner of agriculture
4 (use of certain picloram products), are authorized.

5 (b) The legislative rules filed in the state register on
6 the eighteenth day of June, one thousand nine hundred
7 eighty-six, modified by the commissioner of agriculture
8 to meet the objections of the legislative rule-making
9 review committee and refiled in the state register on the
10 fifth day of January, one thousand nine hundred eighty-
11 seven, relating to the commissioner of agriculture (West
12 Virginia pesticide use and application act), are
13 authorized.

§64-2-20(1)(7). Department of natural resources.

1 (a) The legislative rules filed in the state register on
2 the twenty-sixth day of September, one thousand nine
3 hundred eighty-four, relating to the department of
4 natural resources (public use of state parks, forests,
5 hunting and fishing areas), are authorized.

6 (b) The legislative rules filed in the state register on
7 the ninth day of September, one thousand nine hundred
8 eighty-five, relating to the department of natural
9 resources (WV/NPDES regulations for the coal mining
10 point source category and related sewage facilities), are
11 authorized.

12 (c) The legislative rules filed in the state register on
13 the thirtieth day of December, one thousand nine
14 hundred eighty-six, relating to the department of
15 natural resources (WV/NPDES program for coal mines
16 and preparation plants, and the refuse and waste
17 therefrom), are authorized with the amendments set
18 forth below:

19 On page four, §1.9.1.a by inserting the words "five

20 thousand dollars or” after the words “significant portion
21 of income’ means” and

22 On page four, §1.9.1.a by inserting the words “whi-
23 chever is less,” after the words “ten percent or more of
24 gross personal income for a calendar year”.

§64-2-20(2)(12). Director of the department of natural resources.

1 The legislative rules filed in the state register on the
2 seventh day of August, one thousand nine hundred
3 eighty-six, relating to the director of the department of
4 natural resources (procedures for transporting and
5 dealing in furbearing animals), are authorized.

§64-2-20(2)(23a). Department of natural resources; commercial whitewater advisory board.

1 The legislative rules filed in the state register on the
2 twentieth day of December, one thousand nine hundred
3 eighty-six, modified by the commercial whitewater
4 advisory board to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on sixteenth day of January, one thousand nine
7 hundred eighty-seven, relating to the commercial
8 whitewater advisory board (commercial whitewater
9 outfitters), are authorized with the following
10 amendments:

11 “On page 1, §2.1, by striking all of §2.1 and inserting
12 in lieu thereof the following: ‘2.1 Commercial white-
13 water outfitter means any person, partnership, corpora-
14 tion or other organization, or any combination thereof,
15 duly authorized and operating from within or from
16 without the state, which for monetary profit or gain,
17 provides whitewater expeditions or rents whitewater
18 craft or equipment for use in whitewater expeditions on
19 any river, portions of rivers or waters of the state.”

§64-2-20(5)(5). Water resources board.

1 The legislative rules filed in the state register on the
2 seventeenth day of October, one thousand nine hundred
3 eighty-five, and modified by the state water resources

4 board to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the twenty-fourth day of February, one
7 thousand nine hundred eighty-seven, relating to the
8 state water resources board (special regulations) are
9 authorized. These rules were proposed by the state
10 water resources board pursuant to section three, article
11 five-a, and section five, article five, of chapter twenty
12 of this code.

§64-2-20(5a)(3). Water resources board.

1 (a) The legislative rules filed in the state register on
2 the sixth day of January, one thousand nine hundred
3 eighty-three, relating to the state water resources board
4 (underground injection control program), are
5 authorized.

6 (b) The legislative rules filed in the state register on
7 the fifteenth day of November, one thousand nine
8 hundred eighty-three, relating to the state water
9 resources board (special regulations), are authorized.

10 (c) The legislative rules filed in the state register on
11 the third day of August, one thousand nine hundred
12 eighty-three, relating to the state water resources board
13 (groundwater protection standards), are authorized.

14 (d) The legislative rules filed in the state register on
15 the fifteenth day of November, one thousand nine
16 hundred eighty-three, relating to the state water
17 resources board (state national pollutant discharge
18 elimination system (NPDES) program), are authorized.

19 (e) The Legislature hereby authorizes and directs the
20 state water resources board to promulgate rules relating
21 to water quality standards in exact conformity with the
22 rules relating to water quality standards tendered to the
23 secretary of state on the seventh day of March, one
24 thousand nine hundred eighty-four by the executive
25 secretary of the state water resources board, to be
26 received and filed for inclusion in the state register by
27 the secretary of state.

28 (f) The legislative rules filed in the state register on
29 the seventh day of January, one thousand nine hundred

30 eighty-five, modified by the water resources board to
31 meet the objections of the legislative rule-making review
32 committee and refiled in the state register on the
33 thirteenth day of February, one thousand nine hundred
34 eighty-five, relating to the water resources board (water
35 quality standards), are authorized.

36 (g) The legislative rules filed in the state register on
37 the seventeenth day of October, one thousand nine
38 hundred eighty-five, modified by the state water
39 resources board to meet the objections of the legislative
40 rule-making review committee and refiled in the state
41 register on the eighth day of January, one thousand nine
42 hundred eighty-seven, and further modified by the state
43 water resources board to meet the objections of the
44 legislative rule-making review committee and refiled in
45 the state register on the twenty-fourth day of February,
46 one thousand nine hundred eighty-seven, relating to the
47 state water resources board (water quality standards),
48 are authorized.

49 (h) The legislative rules filed in the state register on
50 the seventeenth day of October, one thousand nine
51 hundred eighty-five, modified by the state water
52 resources board to meet the objections of the legislative
53 rule-making review committee and refiled in the state
54 register on the eighth day of January, one thousand nine
55 hundred eighty-seven, and further modified by the state
56 water resources board to meet the objections of the
57 legislative rule-making review committee and refiled in
58 the state register on the twenty-fourth day of February,
59 one thousand nine hundred eighty-seven, relating to the
60 state water resources board (state national pollutant
61 discharge elimination system (NPDES) program), are
62 authorized.

63 (i) The legislative rules filed in the state register on
64 the seventeenth day of October, one thousand nine
65 hundred eighty-five, and modified by the state water
66 resources board to meet the objections of the legislative
67 rule-making review committee and refiled in the state
68 register on the twenty-fourth day of February, one
69 thousand nine hundred eighty-seven, relating to the

70 state water resources board (underground injection
71 control program), are authorized.

72 (j) The legislative rules filed in the state register on
73 the seventeenth day of October, one thousand nine
74 hundred eighty-five, and modified by the state water
75 resources board to meet the objections of the legislative
76 rule-making review committee and refiled in the state
77 register on the twenty-fourth day of February, one
78 thousand nine hundred eighty-seven, relating to the
79 state water resources board (special regulations), are
80 authorized. These rules were proposed by the state
81 water resources board pursuant to section three, article
82 five-a, and section five, article five, of chapter twenty
83 of this code.

§64-2-20(5c)(6). Water development authority.

1 (a) The legislative rules filed in the state register on
2 the thirtieth day of August, one thousand nine hundred
3 eighty-four, relating to the water development authority
4 (hardship grant funds), are authorized.

5 (b) The legislative rules filed in the state register on
6 the fourteenth day of August, one thousand nine
7 hundred eighty-six, relating to the water development
8 authority (requirements governing disbursements of
9 loans and grants to governmental agencies for the
10 acquisition or construction of water development
11 projects), are authorized.

§64-2-20(5e)(6). Department of natural resources.

1 (a) The legislative rules filed in the state register on
2 the sixth day of January, one thousand nine hundred
3 eighty-four, relating to the department of natural
4 resources (hazardous waste management), are
5 authorized.

6 (b) The legislative rules filed in the state register on
7 the sixth day of January, one thousand nine hundred
8 eighty-four, relating to the air pollution control commis-
9 sion (to prevent and control air pollution from hazardous
10 waste treatment, storage or disposal facilities)(series
11 XXV), are authorized with the amendments set forth
12 below:

13 Page 3, §1.06, change the § title from "Enforcement"
14 to "Procedure"; place an "(a)" in front of the existing
15 paragraph and add the following:

16 "(b) Permit applications filed pursuant to this regu-
17 lation shall be processed in accordance with the
18 permitting procedures as set forth in code §20-5E of this
19 regulation. Permit procedures set forth in code §16-20
20 and any other regulation of this commission are not
21 applicable to any permit application filed pursuant to
22 this regulation."

23 Such rules shall also include a section which shall
24 read as follows:

25 "The commission shall report to the legislative rule-
26 making review committee as required by that commit-
27 tee, but in no event later than the first day of the regular
28 session of the Legislature in the year one thousand nine
29 hundred eighty-five. Such report shall include informa-
30 tion regarding the commission's data gathering efforts,
31 the development of compliance programs, the progress
32 in implementation, and such other matters as the
33 committee may require, pertaining to the regulations
34 hereby authorized."

35 (c) The legislative rules filed in the state register on
36 the third day of December, one thousand nine hundred
37 eighty-four, modified by the department of natural
38 resources to meet the objections of the legislative rule-
39 making review committee and refiled in the state
40 register on the thirteenth day of February, one thousand
41 nine hundred eighty-five, relating to the department of
42 natural resources (hazardous waste management), are
43 authorized.

44 (d) The legislative rules filed in the state register on
45 the eleventh day of December, one thousand nine
46 hundred eighty-five, modified by the department of
47 natural resources to meet the objections of the legislative
48 rule-making review committee and refiled in the state
49 register on the twentieth day of February, one thousand
50 nine hundred eighty-six, relating to the department of
51 natural resources (hazardous waste management), are
52 authorized.

53 (e) The legislative rules filed in the state register on
54 the fifth day of March, one thousand nine hundred
55 eighty-six, relating to the department of natural
56 resources (hazardous waste management), are
57 authorized.

58 (f) The legislative rules filed in the state register on
59 the tenth day of October, one thousand nine hundred
60 eighty-five, relating to the department of natural
61 resources (hazardous waste management: small quantity
62 generators and waste minimization certification), are
63 authorized with the amendments set forth below:

64 On page 1, §3.1.4b delete the word "or" in the reference
65 to "paragraph (g) or (j)" and insert in lieu thereof the
66 words "and, if applicable."

67 (g) The legislative rule filed in the state register on
68 the twenty-sixth day of September, one thousand nine
69 hundred eighty-six, modified by the department of
70 natural resources to meet the objections of the legislative
71 rule-making review committee and refiled in the state
72 register on the ninth day of December, one thousand
73 nine hundred eighty-six, relating to the department of
74 natural resources (hazardous waste management regu-
75 lations), are authorized.

76 (h) The legislative rule filed in the state register on
77 the ninth day of January, one thousand nine hundred
78 eighty-seven, relating to the department of natural
79 resources (hazardous waste management regulations),
80 are authorized.

81 (i) The legislative rule filed in the state register on the
82 fifth day of March, one thousand nine hundred eighty-
83 seven, relating to the department of natural resources
84 (hazardous waste management regulations, Series 35)
85 are authorized.

**§64-2-22(1)(13). Department of energy; director of the
division of oil and gas.**

1 (a) The legislative rules filed in the state register on
2 the eleventh day of August, one thousand nine hundred
3 eighty-six, modified by the director of the division of oil
4 and gas of the department of energy to meet the

5 objections of the legislative rule-making review commit-
6 tee and refiled in the state register on the fifteenth day
7 of December, one thousand nine hundred eighty-six,
8 relating to the director of the division of oil and gas of
9 the department of energy (oil and gas wells and other
10 wells), are authorized.

11 (b) The legislative rules filed in the state register on
12 the eleventh day of August, one thousand nine hundred
13 eighty-six, modified by the director of the oil and gas
14 division of the department of energy to meet the
15 objections of the legislative rule-making review commit-
16 tee and refiled in the state register on the fifteenth day
17 of December, one thousand nine hundred eighty-six,
18 relating to the director of the division of oil and gas of
19 the department of energy (certification of gas wells), are
20 authorized.

21 (c) The legislative rules filed in the state register on
22 the eleventh day of August, one thousand nine hundred
23 eighty-six, modified by the director of the division of oil
24 and gas of the department of energy to meet the
25 objections of the legislative rule-making review commit-
26 tee and refiled in the state register on the fifteenth day
27 of December, one thousand nine hundred eighty-six,
28 relating to the director of the division of oil and gas of
29 the department of energy (underground injection
30 control), are authorized.

31 (d) The legislative rules filed in the state register on
32 the eleventh day of August, one thousand nine hundred
33 eighty-six, modified by the director of the division of oil
34 and gas of the department of energy to meet the
35 objections of the legislative rule-making review commit-
36 tee and refiled in the state register on the fifteenth day
37 of December, one thousand nine hundred eighty-six,
38 relating to the director of the division of oil and gas of
39 the department of energy (state national pollutant
40 discharge elimination system (NPDES) program), are
authorized.

**§64-2-22(1)(16). Commissioner of the department of
energy.**

1 (a) The legislative rules filed in the state register on

2 the eleventh day of August, one thousand nine hundred
3 eighty-six, modified by the commissioner of the depart-
4 ment of energy to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the fifteenth day of December, one thousand
7 nine hundred eighty-six, relating to the commissioner of
8 the department of energy (miscellaneous water pollution
9 control), are authorized.

10 (b) The legislative rules filed in the state register on
11 the eleventh day of August, one thousand nine hundred
12 eighty-six, modified by the commissioner of the depart-
13 ment of energy to meet the objections of the legislative
14 rule-making review committee and refiled in the state
15 register on the fifteenth day of December, one thousand
16 nine hundred eighty-six, relating to the commissioner of
17 the department of energy (dam control), are authorized.

18 (c) The legislative rules filed in the state register on
19 the eleventh day of August, one thousand nine hundred
20 eighty-six, modified by the commissioner of the depart-
21 ment of energy to meet the objections of the legislative
22 rule-making review committee and refiled in the state
23 register on the fifteenth day of December, one thousand
24 nine hundred eighty-six, relating to the commissioner of
25 the department of energy (solid waste management), are
26 authorized.

27 (d) The legislative rules filed in the state register on
28 the eleventh day of August, one thousand nine hundred
29 eighty-six, modified by the commissioner of the depart-
30 ment of energy to meet the objections of the legislative
31 rule-making review committee and refiled in the state
32 register on the fifteenth day of December, one thousand
33 nine hundred eighty-six, relating to the commissioner of
34 the department of energy (hazardous waste manage-
35 ment), are authorized.

36 (e) The rules authorized by the Legislature in section
37 twenty-two-a (three) (forty) of this article were also
38 proposed by the commissioner of the department of
39 energy pursuant to section sixteen, article one, chapter
40 twenty-two of this code.

§64-2-22(9)(6). Commissioner of the department of energy.

1 (a) The legislative rules filed in the state register on
2 the fourteenth day of November, one thousand nine
3 hundred eighty-six, modified by the commissioner of the
4 department of energy to meet the objections of the
5 legislative rule-making review committee and refiled in
6 the state register on the sixteenth day of December, one
7 thousand nine hundred eighty-six, relating to the
8 commissioner of the department of energy (standards
9 for certification of coal mine electricians), are autho-
10 rized with the following amendments:

11 "Page one, §2.1, subsection (a), following the second
12 word 'electrician' by striking the colon and inserting the
13 following: 'under the supervision required by section
14 4.1(d) of these rules' and a colon.

15 Page one, §2.1, subsection (a), by deleting all of
16 subdivision 6) and renumbering the subsequent
17 subdivisions.

18 Page two, §2.1, subsection (a), by deleting all of
19 subdivision 9).

20 Page two, §2.1, subsection (b), by deleting all of
21 subdivision 14) and inserting in lieu thereof a new
22 subdivision 14) to read as follows: '14) Replace blown
23 fuses on trolley poles and nips.'

24 Page five, §4.1, subsection (d), line three, following the
25 words 'certified electrician prior' by inserting the words
26 'to any work being performed and again prior'."

27 (b) The legislative rules filed in the state register on
28 the fifteenth day of December, one thousand nine
29 hundred eighty-six, modified by the commissioner of the
30 department of energy to meet the objections of the
31 legislative rule-making review committee and refiled in
32 the state register on the twenty-first day of January, one
33 thousand nine hundred eighty-seven, relating to the
34 commissioner of the department of energy (safety
35 training program for prospective underground coal
36 miners in West Virginia), are authorized.

37 (c) The legislative rules filed in the state register on

38 the fifteenth day of December, one thousand nine
39 hundred eighty-six, modified by the commissioner of the
40 department of energy to meet the objections of the
41 legislative rule-making review committee and refiled in
42 the state register on the twenty-first day of January, one
43 thousand nine hundred eighty-seven, relating to the
44 commissioner of the department of energy (safety
45 training program for prospective surface coal miners in
46 West Virginia), are authorized.

§64-2-22a(3)(40). Commissioner of the department of energy.

1 The legislative rules filed in the state register on the
2 twelfth day of January, one thousand nine hundred
3 eighty-seven, modified by the commissioner of the
4 department of energy to meet the objections of the
5 legislative rule-making review committee and refiled in
6 the state register on the twentieth day of February, one
7 thousand nine hundred eighty-seven, relating to the
8 commissioner of the department of energy (state
9 national pollutant discharge elimination system
10 (NPDES) for mines and minerals), are authorized.

§64-2-27(9)(1). State board of health.

1 (a) The legislative rules filed in the state register on
2 the fourteenth day of November, one thousand nine
3 hundred eighty-three, relating to the state board of
4 health (licensure of behavioral health centers), are
5 authorized with the 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
8 "within twenty-four hours after receiving a report of a
9 complaint."

10 (b) The legislative rules filed in the state register on
11 the twenty-first day of November, one thousand nine
12 hundred eighty-six, modified by the state board of
13 health to meet the objections of the legislative rule-
14 making review committee and refiled in the state
15 register on the twenty-third day of December, one
16 thousand nine hundred eighty-six, relating to the state

17 board of health (licensure of behavioral health centers),
18 are authorized.

§64-2-27(17)(3). 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 and on the twenty-first day of November,
4 one thousand nine hundred eighty-six and authorized by
5 the Legislature in section twenty-seven (nine) (one) of
6 this article were also proposed by the state board of
7 health pursuant to section three, article seventeen,
8 chapter twenty-seven of this code.

§64-2-29(3)(5). State fire commission.

1 (a) The legislative rules filed in the state register on
2 the third day of January, one thousand nine hundred
3 eighty-four, relating to the state fire commission (state
4 fire code) are authorized with the amendments set forth
5 below:

6 Page 1, § 106, line 1, after the word add the words
7 “personal care homes caring for five or less patients or”;
8 and

9 Page 26, § 11.06(3)A.(3). Strike the period at the end
10 of the sentence and add the words “except for existing
11 sleeping rooms owned by the state and located in
12 dormitories or state parks.”

13 (b) The legislative rules filed in the state register on
14 the first day of August, one thousand nine hundred
15 eighty-six, modified by the state fire commission to meet
16 the objection of the legislative rule-making review
17 committee and refiled in the state register on the
18 twenty-eighth day of October, one thousand nine
19 hundred eighty-six, relating to the state fire commission
20 (hazardous substance emergency response training
21 program), are authorized.

§64-2-29(6)(10). Civil service commission.

1 The legislative rules filed in the state register on the
2 nineteenth day of November, one thousand nine hundred
3 eighty-six, modified by the civil service commission to
4 meet the objection of the legislative rule-making review
5 committee and refiled in the state register on the

6 fifteenth day of December, one thousand nine hundred
7 eighty-six, relating to the civil service commission (civil
8 service system), are authorized.

§64-2-30(6)(3). Board of embalmers and funeral directors.

1 (a) The legislative rules filed in the state register on
2 the twenty-seventh day of July, one thousand nine
3 hundred eighty-four, modified by the board of em-
4 balmers and funeral directors to meet the objections of
5 the legislative rule-making review committee and
6 refiled in the state register on the ninth day of January,
7 one thousand nine hundred eighty-five, relating to the
8 board of embalmers and funeral directors (apprentice-
9 ship), are authorized.

10 (b) The legislative rules filed in the state register on
11 the sixteenth day of October, one thousand nine hundred
12 eighty-five, modified by the board of embalmers and
13 funeral directors to meet the objections of the legislative
14 rule-making review committee and refiled in the state
15 register on the eighteenth day of July, one thousand nine
16 hundred eighty-six, relating to the board of embalmers
17 and funeral directors (governing the board of em-
18 balmers and funeral directors), are authorized.

§64-2-30(7a)(5). West Virginia board of examiners for licensed practical nurses.

1 (a) The legislative rules filed in the state register on
2 the thirtieth day of July, one thousand nine hundred
3 eighty-six, modified by the West Virginia board of
4 examiners for licensed practical nurses to meet the
5 objections of the legislative rule-making review commit-
6 tee and refiled in the state register on the thirtieth day
7 of September, one thousand nine hundred eighty-six,
8 relating to the West Virginia board of examiners for
9 licensed practical nurses (policies relating to licensure
10 of the licensed practical nurse), are authorized.

11 (b) The legislative rules filed in the state register on
12 the thirtieth day of July, one thousand nine hundred
13 eighty-six, relating to the West Virginia board of
14 examiners for licensed practical nurses (legal standards

15 of nursing practice for the licensed practical nurse) are
16 authorized.

17 (c) The legislative rules filed in the state register on
18 the thirtieth day of July, one thousand nine hundred
19 eighty-six, relating to the West Virginia board of
20 examiners for licensed practical nurses (fees for services
21 rendered by the board) are authorized.

§64-2-31a(8b)(5). Commissioner of banking.

1 The legislative rules filed in the state register on the
2 seventh day of November, one thousand nine hundred
3 eighty-six, modified by the commissioner of banking to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 eleventh day of December, one thousand nine hundred
7 eighty-six, relating to the commissioner of banking
8 (implementing the West Virginia community reinvest-
9 ment act), are authorized.

§64-2-33(2)(10). Insurance commissioner.

1 (a) The legislative rules filed in the state register on
2 the eighteenth day of October, one thousand nine
3 hundred eighty-three, relating to the insurance commis-
4 sioner (excess line brokers), are authorized.

5 (b) The legislative rules filed in the state register on
6 the eighteenth day of August, one thousand nine
7 hundred eighty-six, modified by the insurance commis-
8 sioner to meet the objection of the legislative rule-
9 making review committee and refiled in the state
10 register on the twelfth day of December, one thousand
11 nine hundred eighty-six, relating to the insurance
12 commissioner (examiners' compensation, qualification
13 and classification), are authorized.

**§64-2-33(30)(15). State board of risk and insurance
management.**

1 The legislative rules filed in the state register on the
2 twenty-sixth day of November, one thousand nine
3 hundred eighty-five, modified by the state board of risk
4 and insurance management to meet the objections of the
5 legislative rule-making review committee and refiled in
6 the state register on the eighth day of December, one
7 thousand nine hundred eighty-six, relating to the state

8 board of risk and insurance management (mine subsi-
9 dence insurance program), are authorized.

§64-2-46a(6)(103). Attorney general.

1 (a) The legislative rules filed in the state register on
2 the nineteenth day of September, one thousand nine
3 hundred eighty-six, modified by the attorney general to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the first
6 day of December, one thousand nine hundred eighty-six,
7 relating to the attorney general (prevention of unfair or
8 deceptive acts or practices in home improvement and
9 home construction transactions), are authorized. These
10 rules were proposed by the attorney general pursuant
11 to section one hundred three, article six and section one
12 hundred two, article seven of chapter forty-six-a of this
13 code with the following amendments:

14 "Amending the title to the proposed legislative rule
15 wherever said title may appear, on lines three and four
16 thereof, by striking the words 'and home construction'.

17 On the index page following '3.' by striking the
18 words 'and home construction'.

19 On page 1, §1.2, line three, after the first word 'tran-
20 sactions' on line three, by striking the comma and the
21 words 'and home construction transactions' and on line
22 five, by striking the period and inserting the words 'but
23 shall not cover new construction of single-family
24 dwellings or rebuilding all or substantially all of an
25 existing or preexisting single-family dwelling.'

26 Page 2, section 2.2 by striking all of lines seven and
27 eight and inserting in lieu thereof the following:

28 'unless: (a) it appears in printed or typed face larger
29 than the largest type used in the written contract,
30 apart'.

31 On page 2, section 2.4, by striking all of section 2.4
32 and inserting in lieu thereof a new section 2.4, to read
33 as follows:

34 '2.4 "Home Construction" means, for the purpose of
35 this Rule, the repair, remodeling or the building of
36 additions to existing single-family dwelling units,

37 including single-family homes, condominium units or
38 any other dwelling unit to be used by any person
39 primarily for personal or family use, but shall not
40 include new single-family home construction or the
41 rebuilding of all or substantially all of an existing or
42 preexisting single-family dwelling.'

43 Page 3, section 2.6, on line two thereof, after the
44 second comma by inserting the word 'replacement'.

45 Page 3, section 3., by striking the words 'and home
46 construction' from the section heading.

47 Page 3, section 3.1, lines one and two, by striking the
48 words 'or home construction'.

49 Page 4, section 3.1.4, on lines one and two thereof, by
50 striking the words 'or home construction'.

51 Page 4, section 3.1.8, on line two thereof, by striking
52 the words 'or home construction'.

53 Page 4, section 3.1.9, on lines two and three thereof,
54 by striking the words 'or home construction'.

55 Page 5, section 3.1.12, on lines one and two thereof,
56 by striking the words 'or home construction'.

57 Page 6, section 3.1.26, by striking all of section 3.1.26
58 and renumbering the subsequent subsections.

59 Page 7, section 3.1.29, on lines one and two thereof,
60 by striking the words 'or home construction'.

61 Page 7, section 3.1.29, on line six thereof, following the
62 word 'contract' by inserting a period and striking the
63 remainder of the section.

64 Page 7, following section 3.1.29 by adding a new
65 section to be designated section 3.1.29, to read as follows:

66 'failed to file a certificate in the office of the Clerk of
67 the County Commission in the county in which the
68 principal place of business of the seller is located, setting
69 forth the assumed name in or by which the business is
70 being conducted in conformity with B the provisions of
71 Chapter 47, Article 8, Section 2 of the Code of West
72 Virginia, 1931, as amended.'

73 Page 7, section 3.2, on lines two and three thereof, by

74 striking the words, 'or home solicitation sale of home
75 construction' and the comma on line three.

76 Page 9, section 4.1, on line eight thereof, by deleting
77 the period and inserting the following:

78 'to the extent permitted by statute' and a period.

79 Page 10, section 4.2, on line 9 thereof, by striking the
80 period and inserting the following:

81 'to the extent permitted by statute' and a period."

82 (b) The legislative rules filed in the state register on
83 the twenty-third day of September, one thousand nine
84 hundred eighty-six, modified by the attorney general to
85 meet the objections of the legislative rule-making review
86 committee and refiled in the state register on the first
87 day of December, one thousand nine hundred eighty-six,
88 relating to the attorney general (prevention of unfair or
89 deceptive acts or practices in the sale of damaged goods
90 or products), are authorized. These rules were proposed
91 by the attorney general pursuant to section one hundred
92 three, article six and section one hundred two, article
93 seven of chapter forty-six-a of the code.

§64-2-46a(7)(102). Attorney general.

1 The legislative rules authorized by the Legislature in
2 section forty-six-a (six) (one hundred three) of this
3 article were also proposed by the attorney general
4 pursuant to section one hundred two, article seven,
5 chapter forty-six-a of this code.

*CHAPTER 76

(S. B. 761—By Senators Tucker and Holmes)

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

AN ACT to amend and reenact sections fifteen and fifteen-a,
article three, chapter twenty-nine-a of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended; to further amend said article by adding
thereto a new section, designated section fifteen-b; and
to amend and reenact sections five-e (one) (five), eleven

*Clerk's Note: This act amends the provisions set forth in S. B. 748, (Ch. 75)
which passed March 14, 1987.

(one-a) (one), eleven (one-a) (twenty-nine-a, eleven (ten) (five), eleven (twelve) (twenty-four), sixteen (one) (seven), sixteen (three-a) (two), sixteen (five) (three), sixteen (five-b) (eight), sixteen (twenty-nine-a) (five), seventeen-a (two) (nine), nineteen (one-a) (three), nineteen (one-a) (four), nineteen (sixteen-b) (four), twenty (one) (seven), twenty (two) (twelve), twenty (two) (twenty-three-a), twenty (five) (five), twenty (five-a) (three), twenty (five-c) (six), twenty (five-e) (six), twenty-two (one) (thirteen), twenty-two (one) (sixteen), twenty-two (nine) (six), twenty-two-a (three) (forty), twenty-seven (nine) (one), twenty-seven (seventeen) (three), twenty-nine (three) (five), twenty-nine (six) (ten), thirty (six) (three), thirty (seven-a) (five), thirty-one-a (eight-b) (five), thirty-three (two) (ten), thirty-three (thirty) (fifteen), forty-six-a (six) (one hundred three) and forty-six-a (seven) (one hundred two), article two, chapter sixty-four of said code, all relating generally to the promulgation of administrative rules and regulations by the various executive or administrative agencies and the procedures relating thereto; providing that emergency rules promulgated by the secretary of state be reviewed by and may be disapproved by the attorney general; the legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of such agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of such agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of such agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; directing certain of such agencies to promulgate certain legislative rules filed in the office of the secretary of state during the regular session of the Legislature held in the year one thousand nine hundred eighty-seven; authorizing the West Virginia industrial and trade jobs development corporation to promulgate certain legislative rules relating to the general administration of the West Virginia capital company act and to the establishment of application procedures to

implement the act as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to a listing of interests in natural resources for the first statewide reappraisal and providing for penalties; authorizing the state tax commissioner to promulgate certain legislative rules relating to the review of appraisals by county commissions sitting as administrative appraisal review boards as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to review of reappraisals by a circuit court on certiorari as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to the administrative review of appeals by the state tax commissioner as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to the additional review and implementation of property reappraisals as modified; authorizing the state tax commissioner to promulgate certain legislative rules relating to providing guidelines for assessors to assure fair and uniform property values; authorizing the state tax commissioner to promulgate certain legislative rules relating to business and occupation taxes as modified; authorizing the state tax commissioner to promulgate certain legislative rules governing the registration of transient vendors as modified; authorizing the state board of health to promulgate certain legislative rules relating to establishing methods and standards for chemical tests for intoxication as modified; authorizing the director of the department of health to promulgate certain legislative rules governing the hazardous material treatment information repository as modified; authorizing the state board of health to promulgate certain legislative rules relating to vital statistics as modified; authorizing the state board of health to promulgate certain legislative rules governing hospital licensure and relating to allowing hospitals to have licensed health care professionals, other than licensed physicians, on their staff, as modified; authorizing the state board of health to promulgate certain legislative rules governing hospital licensure as modified; authorizing the West Virginia hospital finance authority

to promulgate certain legislative rules governing the establishment of fee schedule and cost allocation applicable to issuance of bonds by West Virginia hospital finance authority as modified; authorizing the commissioner of motor vehicles to promulgate certain legislative rules relating to the seizure of a driver's license and the issuance of a temporary driver's license as modified; authorizing the commissioner of motor vehicles to promulgate certain legislative rules relating to a federal safety standards inspection program as modified; authorizing the commissioner of agriculture to promulgate certain legislative rules relating to ginseng as modified; authorizing the commissioner of agriculture to promulgate certain legislative rules relating to the West Virginia pesticide use and application act as modified; authorizing the director of the department of natural resources to promulgate certain legislative rules relating to the WV/NPDES program for coal mines and preparation plants and the refuse and waste therefrom with certain amendments thereto; authorizing the director of the department of natural resources to promulgate certain legislative rules relating to procedures for transporting and dealing in furbearing animals; authorizing the commercial whitewater advisory board to promulgate certain legislative rules relating to commercial whitewater outfitters as modified; authorizing the water resources board to promulgate certain legislative rules relating to water quality standards as modified; authorizing the water resources board to promulgate certain legislative rules relating to the state national pollutant discharge elimination system (NPDES) program as modified; authorizing the water resources board to promulgate certain legislative rules relating to special regulations; authorizing the water resources board to promulgate certain legislative rules relating to the underground injection control program; authorizing the water development authority to promulgate certain legislative rules relating to requirements governing disbursement of loans and grants to governmental agencies for the acquisition or construction of water development projects; authorizing the director of the department of

natural resources to promulgate certain legislative rules relating to hazardous waste management as modified; authorizing the director of the department of natural resources to promulgate certain legislative rules relating to hazardous waste management; authorizing the director of the department of natural resources to promulgate certain legislative rules relating to hazardous waste management which were filed in the state register on the fifth day of March, one thousand nine hundred eighty-seven, which rules modify the previously filed rules entitled "Hazardous Waste Management, Series 35"; authorizing the director of the division of oil and gas of the department of energy to promulgate certain legislative rules governing oil and gas wells and other wells as modified; authorizing the director of the division of oil and gas of the department of energy to promulgate certain legislative rules governing certification of gas wells; authorizing the director of the division of oil and gas of the department of energy to promulgate certain legislative rules governing underground injection control as modified; authorizing the director of the division of oil and gas of the department of energy to promulgate certain legislative rules governing the state national pollutant discharge elimination system (NPDES) program as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing miscellaneous water pollution control; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing dam control as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing solid waste management as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing hazardous waste management as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing the state national pollutant discharge elimination system (NPDES) for mines and minerals as modified; authorizing the commissioner of the department of energy to promulgate certain legislative

rules relating to the standards for certification of coal mine electricians as modified; authorizing the commissioner of the department of energy to promulgate certain legislative rules governing the safety training program for prospective underground coal miners in West Virginia; authorizing the commissioner of the department of energy to promulgate legislative rules governing the safety training program for prospective surface coal miners in West Virginia; authorizing the promulgation of certain legislative rules and regulations relating to the standards for certification of underground belt examiners for underground coal mines; authorizing the state board of health to promulgate certain legislative rules relating to the licensure of behavioral health centers as modified; authorizing the state fire commission to promulgate certain legislative rules relating to the hazardous substance emergency response training program as modified; authorizing the civil service commission to promulgate certain legislative rules governing the civil service system as modified; authorizing the West Virginia board of embalmers and funeral directors to promulgate certain legislative rules relating to the governing of the board of embalmers and funeral directors as modified; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate certain legislative rules governing policies relating to licensure of the licensed practical nurse as modified; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate certain legislative rules governing legal standards of nursing practice for the licensed practical nurse; authorizing the West Virginia board of examiners for licensed practical nurses to promulgate certain legislative rules governing fees for services rendered by the board; authorizing the commissioner of banking to promulgate certain legislative rules implementing the West Virginia community reinvestment act as modified; authorizing the insurance commissioner to promulgate certain legislative rules relating to examiners' compensation, qualification and classification as modified; authorizing the state board of risk and insurance management to promulgate certain legislative

rules governing the mine subsidence insurance program as modified; authorizing the attorney general to promulgate certain legislative rules relating to the prevention of unfair or deceptive acts or practices in home improvement and home construction transactions as modified; and authorizing the attorney general to promulgate certain legislative rules relating to the prevention of unfair or deceptive acts or practices in the sale of damaged goods or products as modified .

Be it enacted by the Legislature of West Virginia:

That sections fifteen and fifteen-a, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article three be further amended by adding thereto a new section, designated section fifteen-b; and that sections five-e (one) (five), eleven (one-a) (one), eleven (one-a) (twenty-nine-a), eleven (ten) (five), eleven (twelve) (twenty-four), sixteen (one) (seven), sixteen (three-a) (two), sixteen (five) (three), sixteen (five-b) (eight), sixteen (twenty-nine-a) (five), seventeen-a (two) (nine), nineteen (one-a) (three), nineteen (one-a) (four), nineteen (sixteen-b) (four), twenty (one) (seven), twenty (two) (twelve), twenty (two) (twenty-three-a), twenty (five) (five), twenty (five-a) (three), twenty (five-c) (six), twenty (five-e) (six), twenty-two (one) (thirteen), twenty-two (one) (sixteen), twenty-two (nine) (six), twenty-two-a (three) (forty), twenty-seven (nine) (one), twenty-seven (seventeen) (three), twenty-nine (three) (five), twenty-nine (six) (ten), thirty (six) (three), thirty (seven-a) (five), thirty-one-a (eight-b) (five), thirty-three (two) (ten), thirty-three (thirty) (fifteen), forty-six-a (six) (one hundred three) and forty-six-a (seven) (one hundred two), article two, chapter sixty-four of said code be amended and reenacted, all to read as follows:

Chapter

29A. State Administrative Procedures.

64. Legislative Rules.

CHAPTER 29A.

STATE ADMINISTRATIVE PROCEDURES.

ARTICLE 3. RULE MAKING.

§29A-3-15. Emergency legislative rules; procedures for promulgation; definition.

§29A-3-15a. Disapproval of emergency rules by the secretary of state; judicial review.

§29A-3-15b. Disapproval of emergency rules by the attorney general; judicial review.

§29A-3-15. Emergency legislative rules; procedure for promulgation; definition.

1 (a) Any agency with authority to propose legislative
2 rules may, without hearing, find that an emergency
3 exists requiring that emergency rules be promulgated
4 and promulgate the same in accordance with this
5 section. Such emergency rules, together with a state-
6 ment of the facts and circumstances constituting the
7 emergency, shall be filed in the state register and shall
8 become effective immediately upon such filing. Such
9 emergency rules may adopt, amend or repeal any
10 legislative rule, but the circumstances constituting the
11 emergency requiring such adoption, amendment or
12 repeal shall be stated with particularity and be subject
13 to de novo review by any court having original jurisdic-
14 tion of an action challenging their validity. Fifteen
15 copies of the rules and of the required statement shall
16 be filed forthwith with the legislative rule-making
17 review committee.

18 An emergency rule shall be effective for not more
19 than fifteen months and shall expire earlier if any of the
20 following occurs:

21 (1) The secretary of state, acting under the authority
22 provided for in section fifteen-a of this article, or the
23 attorney general, acting under the authority provided
24 for in section fifteen-b of this article, disapproves the
25 emergency rule because (A) the agency has exceeded the
26 scope of its statutory authority in promulgating the
27 emergency rule; (B) an emergency does not exist
28 justifying the promulgation of such rule; or (C) the rule
29 was not promulgated in compliance with the provisions
30 of this section.

31 (2) The agency has not previously filed and fails to file
32 a notice of public hearing on the proposed rule within
33 sixty days of the date the proposed rule was filed as an

34 emergency rule; in which case the emergency rule
35 expires on the sixty-first day.

36 (3) The agency has not previously filed and fails to file
37 the proposed rule with the legislative rule-making
38 review committee within one hundred eighty days of the
39 date the proposed rule was filed as an emergency rule;
40 in which case the emergency rule expires on the one
41 hundred eighty-first day.

42 (4) The Legislature has authorized or directed
43 promulgation of an authorized legislative rule dealing
44 with substantially the same subject matter since such
45 emergency rule was first promulgated, and in which
46 case the emergency rule expires on the date the
47 authorized rule is made effective.

48 (5) The Legislature has, by law, disapproved of such
49 emergency rule; in which case the emergency rule
50 expires on the date the law becomes effective.

51 (b) Any amendment to an emergency rule made by the
52 agency shall be filed in the state register and does not
53 constitute a new emergency rule for the purpose of
54 acquiring additional time or avoiding the expiration
55 dates in subdivision (1), (2), (3) or (4), subsection (a) of
56 this section.

57 (c) Once an emergency rule expires due to the
58 conclusion of fifteen months or due to the effect of
59 subdivision (1), (2), (3) or (4), subsection (a) of this
60 section, the agency may not refile the same or similar
61 rule as an emergency rule.

62 (d) Emergency legislative rules currently in effect
63 under the prior provisions of this section may be refiled
64 under the provisions of this section.

65 (e) The provision of this section shall not be used to
66 avoid or evade any provision of this article or any other
67 provisions of this code, including any provisions for
68 legislative review and approval of proposed rules. Any
69 emergency rule promulgated for any such purpose may
70 be contested in a judicial proceeding before a court of
71 competent jurisdiction.

72 (f) The legislative rule-making review committee may
73 review any emergency rule to determine (1) whether the
74 agency has exceeded the scope of its statutory authority
75 in promulgating the emergency rule; (2) whether there
76 exists an emergency justifying the promulgation of such
77 rule; and (3) whether the rule was promulgated in
78 compliance with the requirements and prohibitions
79 contained in this section. The committee may recom-
80 mend to the agency, the Legislature, or the secretary of
81 state such action as it may deem proper.

82 (g) For the purposes of this section, an emergency
83 exists when the promulgation of a rule is necessary for
84 the immediate preservation of the public peace, health,
85 safety or welfare or is necessary to comply with a time
86 limitation established by this code or by a federal statute
87 or regulation or to prevent substantial harm to the
88 public interest.

**§29A-3-15a. Disapproval of emergency rules by the
secretary of state; judicial review.**

1 (a) Upon the filing of an emergency rule by an agency,
2 under the provisions of section fifteen of this article, by
3 any agency, except for the secretary of state, the
4 secretary of state shall review such rule and, within
5 forty-two days of such filing, shall issue a decision as to
6 whether or not such emergency rule should be disap-
7 proved. An emergency rule filed by the secretary of
8 state shall be reviewed by the attorney general as
9 provided for in section fifteen-b of this article.

10 (b) The secretary of state shall disapprove an emer-
11 gency rule if he determines:

12 (1) That the agency has exceeded the scope of its
13 statutory authority in promulgating the emergency rule;

14 (2) That an emergency does not exist justifying the
15 promulgation of the rule; or

16 (3) That the rule was not promulgated in compliance
17 with the provisions of section fifteen of this article.

18 (c) If the secretary of state determines, based upon the
19 contents of the rule or the supporting information filed
20 by the agency, that the emergency rule should be

21 disapproved, he may disapprove such rule without
22 further investigation, notice or hearing. If, however, the
23 secretary of state concludes that the information
24 submitted by the agency is insufficient to allow a proper
25 determination to be made as to whether the emergency
26 rule should be disapproved, he may make further
27 investigation, including, but not limited to, requiring
28 the agency or other interested parties to submit
29 additional information or comment or fixing a date,
30 time and place for the taking of evidence on the issues
31 involved in making a determination under the provi-
32 sions of this section.

33 (d) The determination of the secretary of state shall
34 be reviewable by the supreme court of appeals under its
35 original jurisdiction, based upon a petition for a writ of
36 mandamus, prohibition or certiorari, as appropriate.
37 Such proceeding may be instituted by:

38 (1) The agency which promulgated the emergency
39 rule;

40 (2) A member of the Legislature; or

41 (3) Any person whose personal property interests will
42 be significantly affected by the approval or disapproval
43 of the emergency rule by the secretary of state.

**§29A-3-15b. Disapproval of emergency rules by the
attorney general; judicial review.**

1 (a) Upon the filing of an emergency rule by the
2 secretary of state under the provisions of section fifteen
3 of this article, the attorney general shall review such
4 rule and, within forty-two days of such filing, shall issue
5 a decision as to whether or not such emergency rule
6 should be disapproved.

7 (b) The attorney general shall disapprove an emer-
8 gency rule if he determines:

9 (1) That the secretary of state has exceeded the scope
10 of its statutory authority in promulgating the emer-
11 gency rule;

12 (2) That an emergency does not exist justifying the
13 promulgation of the rule; or

14 (3) That the rule was not promulgated in compliance
15 with the provisions of section fifteen of this article.

16 (c) If the attorney general determines, based upon the
17 contents of the rule or the supporting information filed
18 by the secretary of state, that the emergency rule should
19 be disapproved, he may disapprove such rule without
20 further investigation, notice or hearing. If, however, the
21 attorney general concludes that the information submit-
22 ted by the secretary of state is insufficient to allow a
23 proper determination to be made as to whether the
24 emergency rule should be disapproved, he may make
25 further investigation, including, but not limited to,
26 requiring the secretary of state or other interested
27 parties to submit additional information or comment or
28 fixing a date, time and place for the taking of evidence
29 on the issues involved in making a determination under
30 the provisions of this section.

31 (d) The determination of the attorney general shall be
32 reviewable by the supreme court of appeals under its
33 original jurisdiction, based upon a petition for a writ of
34 mandamus, prohibition or certiorari, as appropriate.
35 Such proceeding may be instituted by:

36 (1) The secretary of state;

37 (2) A member of the Legislature; or

38 (3) Any person whose personal property interests will
39 be significantly affected by the approval or disapproval
40 of the emergency rule by the attorney general.

CHAPTER 64. LEGISLATIVE RULES.

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PRO- MULGATE LEGISLATIVE RULES.

- §64-2-5e(1)(5). West Virginia industrial and trade jobs development
corporation.
- §64-2-11(1a)(1). State tax commissioner.
- §64-2-11(1a)(29a). State tax commissioner.
- §64-2-11(10)(5). State tax commissioner.
- §64-2-11(12)(24). State tax commissioner.
- §64-2-16(1)(7). State board of health.
- §64-2-16(3a)(2). Director of health.
- §64-2-16(5)(3). State board of health.
- §64-2-16(5b)(8). State board of health.

- §64-2-16(29a)(5). West Virginia hospital finance authority.
 §64-2-17a(2)(9). Commissioner of motor vehicles.
 §64-2-19(1a)(3). Division of forestry; department of agriculture.
 §64-2-19(1a)(4). Division of forestry; department of agriculture.
 §64-2-19(16b)(4). Commissioner of agriculture.
 §64-2-20(1)(7). Department of natural resources.
 §64-2-20(2)(12). Director of the department of natural resources.
 §64-2-20(2)(23a). Department of natural resources; commercial whitewater
 advisory board.
 §64-2-20(5)(5). Water resources board.
 §64-2-20(5a)(3). Water resources board.
 §64-2-20(5c)(6). Water development authority.
 §64-2-20(5e)(6). Department of natural resources.
 §64-2-22(1)(13). Department of energy; director of the division of oil and
 gas.
 §64-2-22(1)(16). Commissioner of the department of energy.
 §64-2-22(9)(6). Commissioner of the department of energy.
 §64-2-22a(3)(40). Commissioner of the department of energy.
 §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.
 §64-2-29(6)(10). Civil service commission.
 §64-2-30(6)(3). Board of embalmers and funeral directors.
 §64-2-30(7a)(5). West Virginia board of examiners for licensed practical
 nurses.
 §64-2-31a(8b)(5). Commissioner of banking.
 §64-2-32(2)(10). Insurance commissioner.
 §64-2-33(30)(15). State board of risk and insurance management.
 §64-2-46a(6)(103). Attorney general.
 §64-2-46a(7)(102). Attorney general.

**§64-2-5e(1)(5). West Virginia industrial and trade jobs
 development corporation.**

1 The legislative rules filed in the state register on the
 2 fifteenth day of October, one thousand nine hundred
 3 eighty-six, modified by the West Virginia industrial and
 4 trade jobs development corporation to meet the objec-
 5 tions of the legislative rule-making review committee
 6 and refiled in the state register on the twelfth day of
 7 January, one thousand nine hundred eighty-seven,
 8 relating to the West Virginia industrial and trade jobs
 9 development corporation (general administration of the
 10 West Virginia capital company act and establishment of
 11 application procedures to implement the act), are
 12 authorized.

§64-2-11(1a)(1). State tax commissioner.

1 (a) The legislative rules filed in the state register on
2 the twelfth day of March, one thousand nine hundred
3 eighty-five, relating to the state tax commissioner
4 (identification and appraisal of farmland subsequent to
5 the base year of statewide reappraisal) are authorized
6 and directed to be promulgated with the following
7 amendments:

8 Title page, Subject; following the word "Farmland,"
9 insert the words "and of Structures Situated Thereon."

10 Page i, Subject; following the word "Farmland,"
11 insert the words "and of Structures Situated Thereon."

12 Page i, TABLE OF CONTENTS, Section 10; follow-
13 ing the words "Valuation of Farmland" add the words
14 "and of Structures Situated Thereon."

15 Page 10.1, Title; following the word "FARMLAND"
16 insert the words "AND STRUCTURES SITUATED
17 THEREON."

18 Page 10.1, Section 10, Title; following the word
19 "Farmland" add the words "and Structures Situated
20 Thereon."

21 Page 10.1, Section 10.01(b); following the word
22 "farmland" insert the words "and structures situated
23 thereon."

24 Page 10.2, Section 10.02(a), first sentence; following
25 the word "farmland" insert the words "and structures
26 situated thereon."

27 Page 10.3, Section 10.02(b), first sentence; following
28 the word "farmland" insert the words "and structures
29 situated thereon." Delete the words "for purposes of the
30 statewide reappraisal."

31 Page 10.3, Section 10.02(b), last sentence; following
32 the word "farmland" insert the words "and structures
33 situated thereon."

34 Page 10.8, Section 10.04(5)(B), last sentence; delete the
35 period and add "or the incapability to be adapted to
36 alternative uses."

37 Page 10.9, Section 10.04(6), first sentence; following
38 the words "land currently being used" insert the words
39 "as part of a farming operation,".

40 Page 10.9, Section 10.04(6), following the last sent-
41 ence; add the sentence "For the purposes of this
42 definition, 'contiguous tracts' are farmlands which are in
43 close proximity, but not necessarily adjacent: *Provided*,
44 That all such contiguous tracts are operated as part of
45 the same farm management plan."

46 Page 10.10, Section 10.04(8), is amended to read in its
47 entirety as follows:

48 "(8) *Farm buildings*.—The term 'farm buildings' shall
49 mean structures which directly contribute to the
50 operation of the farm, and shall include tenant houses
51 and quarters furnished farm employees without rent as
52 a part of the terms of their employment."

53 Page 10.11, Section 10.04; delete the word "No-
54 vember" and insert in lieu thereof the word "Sep-
55 tember." Delete the period following the word "valua-
56 tion" and add the words "for the assessment year
57 beginning July first of each year."

58 Page 10.11, Section 10.04, insert the following
59 subdivision; "(12) Application Form: The application
60 form required to be filed with the assessor on or before
61 September first of each year shall require certification
62 that the farm complies with criteria set forth in Section
63 10.05(c) of these regulations, and renewal applications
64 from year to year shall be sufficient upon statement
65 certifying that no change has been made in the use of
66 farm property which would disqualify 'farm use'
67 classification for assessment purposes." Renumber the
68 subdivisions of Section 10.04 following the new
69 10.04(12); formerly 10.04(12) through 10.04(28), to
70 10.04(13) through 10.04(29) respectively.

71 Page 10.14, Section 10.04(28) (formerly 10.04(27));
72 following the words "woodland products" insert a
73 comma and the words "such as nuts or fruits harvested"
74 and add a comma following the words "human consump-
75 tion" on Page 10.15.

76 Page 10.16, Section 10.05, subsection (a), following the
77 words "land is used for farm purposes" by striking the
78 period and inserting in lieu thereof a colon and the
79 following: "*Provided*, That the true and actual value of
80 all farms used, occupied and cultivated by their owners
81 or bona fide tenants shall be arrived at according to the
82 fair and reasonable value of the property for the purpose
83 for which it is actually used regardless of what the value
84 of the property would be if used for some other purpose;
85 and that the true and actual value shall be arrived at
86 by giving consideration to the fair and reasonable
87 income which the same might be expected to earn under
88 normal conditions in the locality wherein situated, if
89 rented: *Provided, however*, That nothing herein shall
90 alter the method of assessment of lands or minerals
91 owned by domestic or foreign corporations."

92 Page 10.16, Section 10.05(b), first clause; following the
93 words "following factors shall be" insert the words
94 "indicative of but not conclusive" and delete the word
95 "considered."

96 Page 10.16, Section 10.05(b)(2); delete the period and
97 add the words "such as soil conservation, farmland
98 preservation or federal farm lending agencies."

99 Page 10.17, Section 10.05(b)(7); delete the section and
100 insert in lieu thereof the words "(7) Whether or not the
101 farmer practices 'custom farming' on the land in
102 question."

103 Page 10.17, Section 10.05(b)(9); following the word
104 "type" add a comma and insert the word "utility."

105 Page 10.17, Section 10.05(b)(11), first sentence;
106 following the word "sales" insert the words "for nonfarm
107 uses."

108 Page 10.17, Section 10.05(b)(12)(A); following the
109 words "part of" insert the words "or appurtenant to."

110 Page 10.17, Section 10.05(b)(12)(B); following the
111 words "contiguous to" insert the words "or operated in
112 common with."

113 Page 10.18, Section 10.05, subsection (c), the first

114 sentence of which is amended in its entirety to read as
115 follows: "Qualifying farmland and the structures
116 situated thereon shall be subject to farm use valuation,
117 with primary consideration being given to the income
118 which the property might be expected to earn, in the
119 locality wherein situate, if rented."

120 Page 10.18, Section 10.05(b)(12)(B); delete the semicol-
121 ons and the words "it was purchased at the same time
122 as the tract so used." Delete the period following the
123 word "purposes" and add the words "or any nonfarm
124 use."

125 Page 10.19, Section 10.05(c)(2); following the words
126 "Provided, That no" delete the word "reason" and insert
127 in lieu thereof the words "individual event."

128 Page 10.20, Section 10.05(c)(4)(C); following the words
129 "(1,000) minimum production value" insert the words
130 "or the small farm five hundred dollars (\$500) minimum
131 production and sale."

132 Page 10.23, Section 10.05(d)(3)(B), third sentence;
133 following the word "If" insert the words "timber from."
134 Delete the period following the word "purpose" and add
135 the words "or is being converted to farm production
136 uses."

137 Page 10.26, Section 10.05(f)(2) is amended in its
138 entirety to read as follows:

139 "(2) *Farm buildings.*—Rental value of farm buildings
140 and other improvements on the farmland shall be valued
141 by determining the replacement cost of the building or
142 structure by usual farm construction practices, and
143 farm labor standards and subtracting therefrom
144 depreciation.¹ Both of these determinations shall be
145 made in accordance with the tax department's real
146 property appraisal manual² as filed in the state register
147 in accordance with chapter 29A of the code of West
148 Virginia, 1931, as amended, and as it relates to
149 agricultural buildings and structures. One (1) acre of
150 land shall be assigned to all buildings as a unit situate
151 on the property, regardless of the actual acreage
152 occupied by such buildings and shall be appraised at its

153 farm-use valuation based on the highest class of
154 farmland present on the farm.”

155 Page 10.28, Section 10.05(f)(3)(B)(1); following the
156 words “or more of the” insert the word “usual.”

157 Page 10.28, Section 10.05(f)(3)(B)(2); following the
158 words “(50%) of the” insert the word “usual.”

159 Page 10.29, Section 10.05(f)(3)(C)(1)(a); following the
160 words “(50%) or more of the” insert the word “usual”.

161 Page 10.29, Section 10.05(f)(3)(C)(1)(b); following the
162 words “(50%) of the” insert the word “usual”.

163 Page 10.31, Section 10.05(f)(3)(C)(2)(b); following the
164 last sentence insert the sentence “An individual em-
165 ployed other than in farming is not an unincorporated
166 business.”

167 Page 10.35, Section 10.07, Title; following the word
168 “Farmland” insert the words “and Structures Situated
169 Thereon.”

170 Page 10.35, Section 10.07(a), first sentence; following
171 the word “farmland” insert the words “and structures
172 situated thereon.”

173 Page 10.46, Subject; following the word “Farmland”
174 insert the words “and Structures Situated Thereon.”

175 (b) The legislative rules filed in the state register on
176 the twenty-sixth day of March, one thousand nine
177 hundred eighty-six, relating to the state tax commis-
178 sioner (listing of interests in natural resources for the
179 first statewide reappraisal; provision for penalties) are
180 authorized.

181 (c) The legislative rules filed in the state register on
182 the twenty-sixth day of March, one thousand nine
183 hundred eighty-six, modified by the state tax commis-
184 sioner to meet the objections of the legislative rule-
185 making review committee and refiled in the state
186 register on the twelfth day of February, one thousand
187 nine hundred eighty-seven, relating to the state tax
188 commissioner (review of appraisals by county commis-
189 sions sitting as administrative appraisal review boards),
190 are authorized.

191 (d) The legislative rules filed in the state register on
192 the twenty-sixth day of March, one thousand nine
193 hundred eighty-six, modified by the state tax commis-
194 sioner to meet the objections of the legislative rule-
195 making review committee and refiled in the state
196 register on the twelfth day of February, one thousand
197 nine hundred eighty-seven, relating to the state tax
198 commissioner (review of appraisals by a circuit court on
199 certiorari), are authorized with the following
200 amendment:

201 On page 3, §18.3.1 is stricken in its entirety and a new
202 §18.3.1 is inserted in lieu thereof to read as follows:

203 "18.3.1 *Who May Request Review.*—The property
204 owner, Tax Commissioner, protestor or intervenor may
205 request the county commission to certify the evidence
206 and remove and return the record to the circuit court
207 of the county on a writ of certiorari. Parties to the
208 proceeding wherein review by the circuit court is sought
209 shall pay costs and fees as they are incurred: *Provided,*
210 That the circuit court upon rendering judgment or
211 making any order may award costs to any party in
212 accordance with the provisions of W. Va. Code §53-3-5."

213 (e) The legislative rules filed in the state register on
214 the twenty-sixth day of March, one thousand nine
215 hundred eighty-six, modified by the state tax commis-
216 sioner to meet the objections of the legislative rule-
217 making review committee and refiled in the state
218 register on the twelfth day of February, one thousand
219 nine hundred eighty-seven, relating to the state tax
220 commissioner (administrative review of appraisals by
221 the state tax commissioner), are authorized.

222 (f) The legislative rules filed in the state register on
223 the eighteenth day of August, one thousand nine
224 hundred eighty-six, modified by the state tax commis-
225 sioner to meet the objections of the legislative rule-
226 making review committee and refiled in the state
227 register on the twelfth day of February, one thousand
228 nine hundred eighty-seven, relating to the state tax
229 commissioner (additional review and implementation of
230 property appraisals), are authorized.

§64-2-11(1a)(29a). State tax commissioner.

1 The legislative rules filed in the state register on the
2 eleventh day of August, one thousand nine hundred
3 eighty-six, relating to the state tax commissioner
4 (guidelines for assessors to assure fair and uniform
5 personal property values) are authorized.

§64-2-11(10)(5). State tax commissioner.

1 (a) The legislative rules filed in the state register on
2 the twenty-eighth day of September, one thousand nine
3 hundred eighty-four, relating to the state tax commis-
4 sioner (estimated personal income tax), are authorized
5 with the amendments set forth below:

6 55.02(a)(2)(on page 182.2) line 18, after the word
7 "profession" strike the words "on his own account" and
8 the comma(,).

9 55.12(b)(1)(page 182.35) at the end of the section,
10 change the period to a comma, and add the following
11 language: "and in the case of a court appointed agent,
12 a copy of the court order of appointment is sufficient."

13 55.12(c)(page 182.36) after the word "for", strike the
14 word "erroneous".

15 (b) The legislative rules filed in the state register on
16 the twenty-eighth day of September, one thousand nine
17 hundred eighty-four, modified by the state tax commis-
18 sioner to meet the objections of the legislative rule-
19 making review committee and refiled in the state
20 register on the fourteenth day of November, one
21 thousand nine hundred eighty-four, and on the twenty-
22 first day of March, one thousand nine hundred eighty-
23 five, relating to the state tax commissioner (estimated
24 corporation net income tax), are authorized.

25 (c) The legislative rules filed in the state register on
26 the fourth day of February, one thousand nine hundred
27 eighty-six, modified by the state tax commissioner to
28 meet the objection of the legislative rule-making review
29 committee and refiled in the state register on the
30 fourteenth day of January, one thousand nine hundred

31 eighty-seven, relating to the state tax commissioner
32 (business and occupation tax) are authorized.

§64-2-11(12)(24). State tax commissioner.

1 The legislative rules filed in the state register on the
2 eighteenth day of August, one thousand nine hundred
3 eighty-six, modified by the state tax commissioner to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the tenth
6 day of December, one thousand nine hundred eighty-six,
7 relating to the state tax commissioner (registration of
8 transient vendors), are authorized.

§64-2-16(1)(7). State board of health.

1 (a) The legislative rules filed in the state register on
2 the second day of June, one thousand nine hundred
3 eighty-two, relating to the state board of health (waste
4 water treatment works operations), are authorized.

5 (b) The legislative rules filed in the state register on
6 the second day of June, one thousand nine hundred
7 eighty-two, relating to the state board of health
8 (laboratory reporting of syphilis and gonorrhea) are
9 authorized.

10 (c) The legislative rules filed in the state register on
11 the second day of June, one thousand nine hundred
12 eighty-two, relating to the state board of health (public
13 water supply operators) with the modification of §11.02
14 as presented to the legislative rule-making review
15 committee on the ninth day of November, one thousand
16 nine hundred eighty-two, are authorized.

17 (d) The legislative rules filed in the state register on
18 the twenty-second day of October, one thousand nine
19 hundred eighty-two, relating to the state board of health
20 (sewage systems) with the modification presented to the
21 legislative rule-making review committee on the sixth
22 day of December, one thousand nine hundred eighty-
23 two, are authorized except lines ten through seventeen,
24 page eight of the rules, shall be stricken in their entirety
25 and the remaining paragraphs renumbered. These rules
26 were proposed by the state board of health pursuant to
27 sections seven and nine, article one, chapter sixteen of
28 this code.

29 (e) The legislative rules filed in the state register on
30 the second day of June, one thousand nine hundred
31 eighty-two, relating to the state board of health
32 (approval of laboratories), are authorized. These rules
33 were proposed by the state board of health pursuant to
34 section one, article seven, chapter sixteen and section
35 six-a, article one, chapter forty-eight of this code.

36 (f) The legislative rules filed in the state register on
37 the thirteenth day of August, one thousand nine hundred
38 eighty-two, and filed with amendments on the eleventh
39 day of January, one thousand nine hundred eighty-three,
40 relating to the state board of health (nursing home
41 licensure), are authorized with the amendment of
42 §5.15.02 of those rules as set forth below:

43 By striking the word "and" at the end of subdivision
44 (f), by changing the period at the end of subdivision (g)
45 to a semicolon, and by adding the following after
46 subdivision (g): "(h) one (1) member who represents
47 social work services."

48 These rules were proposed by the state board of health
49 pursuant to section seven, article one, chapter sixteen
50 and section three, article five-c, chapter sixteen of this
51 code.

52 (g) The legislative rules filed in the state register on
53 the third day of October, one thousand nine hundred
54 eighty-four, relating to the state board of health (trauma
55 center or facility designation), are authorized.

56 (h) The legislative rules filed in the state register on
57 the seventh day of September, one thousand nine
58 hundred eighty-three, relating to the state board of
59 health (well water regulations) are authorized with the
60 amendments set forth below:

61 §4.1. In the first sentence delete the word "obtaining"
62 and insert in lieu thereof the words "applying for." In
63 the second sentence after "4.3" add "and 4.5."

64 §4.2. At the end of the second sentence, strike the
65 period and add the words "unless emergency conditions
66 prevail as noted under §4.3."

67 With the balance of §4.2 and create a new §4.3 with
68 the following changes: In the first sentence delete the
69 word "deadline" and insert in lieu thereof the word
70 "requirements." Add after the first sentence the
71 sentence, "Emergency conditions and unavoidable
72 circumstances are those conditions involving acts of God,
73 water outages or disruption of water service, unsatisfac-
74 tory water quality or quantity or public health threats."
75 In the third sentence delete the word "exceed" and insert
76 in lieu thereof the words "be made in excess of."

77 Renumber §4.3 as §4.4 and add the following two
78 sentences at the end of the section: "Such standards shall
79 constitute the minimum standards for the installation,
80 the alteration or the deepening of water wells. Any plans
81 approved by the director pursuant to these regulations
82 shall be in substantial compliance with the heretofore
83 mentioned standards."

84 Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7, §4.7
85 as §4.8 and §4.8 as §4.9.

86 §5.2. Delete the words "four(4)" and insert in lieu
87 thereof the words "two(2)" and delete the words "active,
88 continuous."

89 (i) The legislative rules filed in the state register on
90 the nineteenth day of December, one thousand nine
91 hundred eighty-three, relating to the state board of
92 health (procedures for recovery of corneal tissue for
93 transplant) are authorized.

94 (j) The legislative rules filed in the state register on
95 the twenty-first day of December, one thousand nine
96 hundred eighty-four, relating to the state board of
97 health (reportable diseases) are authorized.

98 (k) The legislative rules filed in the state register on
99 the third day of October, one thousand nine hundred
100 eighty-four, relating to the state board of health (retail
101 food store sanitation) are authorized.

102 (l) The legislative rules filed in the state register on
103 the seventeenth day of July, one thousand nine hundred
104 eighty-six, modified by the state board of health to meet
105 the objections of the legislative rule-making review

106 committee and refiled in the state register on the
107 sixteenth day of October, one thousand nine hundred
108 eighty-six, relating to the state board of health (methods
109 and standards for chemical tests for intoxication) are
authorized.

§64-2-16(3a)(2). Director of health.

1 The legislative rules filed in the state register on the
2 thirteenth day of August, one thousand nine hundred
3 eighty-six, modified by the director of the department
4 of health to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the sixteenth of October, one thousand nine
7 hundred eighty-six, relating to the director of the
8 department of health (hazardous material treatment
9 information repository) are authorized.

§64-2-16(5)(3). State board of health.

1 The legislative rules filed in the state register on the
2 ninth day of December, one thousand nine hundred
3 eighty-six, modified by the state board of health to meet
4 the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 twenty-third day of December, one thousand nine
7 hundred eighty-six, relating to the state board of health
8 (vital statistics) are authorized.

§64-2-16(5b)(8). State board of health.

1 (a) The legislative rules filed in the state register on
2 the eighteenth day of April, one thousand nine hundred
3 eighty-six, modified by the state board of health to meet
4 the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 seventeenth day of October, one thousand nine hundred
7 eighty-six, relating to the state board of health (hospital
8 licensure) are authorized.

9 (b) The legislative rules filed in the state register on
10 the ninth day of December, one thousand nine hundred
11 eighty-six, modified by the state board of health to meet
12 the objections of the legislative rule-making review
13 committee and refiled in the state register on the
14 twenty-third day of December, one thousand nine

15 hundred eighty-six, relating to the state board of health
16 (hospital licensure and allowing hospitals to have
17 licensed hospital professionals, other than licensed
18 physicians, on their medical staff) are authorized.

§64-2-16(29a)(5). West Virginia hospital finance authority.

1 The legislative rules filed in the state register on the
2 tenth day of June, one thousand nine hundred eighty-
3 six, modified by the West Virginia hospital finance
4 authority to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the ninth day of January, one thousand nine
7 hundred eighty-seven, relating to the West Virginia
8 hospital finance authority (establishment of fee schedule
9 and cost allocation applicable to issuance of bonds) are
10 authorized.

§64-2-17a(2)(9). Commissioner of motor vehicles.

1 (a) The legislative rules filed in the state register on
2 the second day of December, one thousand nine hundred
3 eighty-two, relating to the commissioner of motor
4 vehicles (denial of driving privileges), are authorized
5 with the amendments set forth below:

6 By inserting the words "licensed in the United States"
7 after the phrase "physician of the applicant's choice," on
8 page five, line two, and page seven, line one; and by
9 striking out the words "licensed vision specialist" and
10 inserting in lieu thereof the words "an optometrist or
11 ophthalmologist licensed in the United States," on page
12 five, line three, and on page seven, line two. These rules
13 were proposed by the commissioner pursuant to section
14 nine, article two, chapter seventeen-a and section six,
15 article three-c, chapter seventeen-b of this code.

16 (b) The legislative rules filed in the state register on
17 the twentieth day of November, one thousand nine
18 hundred eighty-four, relating to the commissioner of
19 motor vehicles (titling a vehicle), are authorized.

20 (c) The legislative rules filed in the state register on
21 the fifth day of August, one thousand nine hundred
22 eighty-five, modified by the commissioner of motor

23 vehicles to meet the objections of the legislative rule-
24 making review committee and refiled in the state
25 register on the fourth day of October, one thousand nine
26 hundred eighty-five, relating to the commissioner of
27 motor vehicles (eligibility for reinstatement following
28 suspension or revocation of driving privileges), are
29 authorized.

30 (d) The legislative rules filed in the state register on
31 the twenty-fifth day of July, one thousand nine hundred
32 eighty-six, modified by the commissioner of motor
33 vehicles to meet the objections of the legislative rule-
34 making review committee and refiled in the state
35 register on the ninth day of October, one thousand nine
36 hundred eighty-six, relating to the commissioner of
37 motor vehicles (seizure of a driver's license and issuance
38 of a temporary driver's license), are authorized.

39 (e) The legislative rules filed in the state register on
40 the twenty-fifth day of July, one thousand nine hundred
41 eighty-six, modified by the commissioner of motor
42 vehicles to meet the objections of the legislative rule-
43 making review committee and refiled in the state
44 register on the ninth day of October, one thousand nine
45 hundred eighty-six, relating to the commissioner of
46 motor vehicles (federal safety standards inspection
47 program) are authorized.

**§64-2-19(1a)(3). Division of forestry; department of
agriculture.**

1 The rules authorized by the Legislature in section
2 nineteen (one-a) (four) of this article were also proposed
3 by the commissioner of agriculture pursuant to section
4 three, article one-a, chapter nineteen of this code.

**§64-2-19(1a)(4). Division of forestry; department of
agriculture.**

1 The legislative rules filed in the state register on the
2 eighteenth day of August, one thousand nine hundred
3 eighty-six, modified by the director of the division of
4 forestry of the department of agriculture to meet the
5 objections of the legislative rule-making review commit-
6 tee and refiled in the state register on the fifth day of

7 January, one thousand nine hundred eighty-seven,
8 relating to the director of the division of forestry of the
9 department of agriculture (ginseng), are authorized.
10 These rules were proposed by the director of the division
11 of forestry of the department of agriculture pursuant to
12 sections three and four, article one-a, chapter nineteen
13 of the code.

§64-2-19(16b)(4). Commissioner of agriculture.

1 (a) The legislative rules filed in the state register on
2 the fifth day of January, one thousand nine hundred
3 eighty-four, relating to the commissioner of agriculture
4 (use of certain picloram products), are authorized.

5 (b) The legislative rules filed in the state register on
6 the eighteenth day of June, one thousand nine hundred
7 eighty-six, modified by the commissioner of agriculture
8 to meet the objections of the legislative rule-making
9 review committee and refiled in the state register on the
10 fifth day of January, one thousand nine hundred eighty-
11 seven, relating to the commissioner of agriculture (West
12 Virginia pesticide use and application act), are
authorized.

§64-2-20(1)(7). Department of natural resources.

1 (a) The legislative rules filed in the state register on
2 the twenty-sixth day of September, one thousand nine
3 hundred eighty-four, relating to the department of
4 natural resources (public use of state parks, forests,
5 hunting and fishing areas), are authorized.

6 (b) The legislative rules filed in the state register on
7 the ninth day of September, one thousand nine hundred
8 eighty-five, relating to the department of natural
9 resources (WV/NPDES regulations for the coal mining
10 point source category and related sewage facilities), are
11 authorized.

12 (c) The legislative rules filed in the state register on
13 the thirtieth day of December, one thousand nine
14 hundred eighty-six, relating to the department of
15 natural resources (WV/NPDES program for coal mines
16 and preparation plants, and the refuse and waste

17 therefrom), are authorized with the amendments set
18 forth below:

19 On page four, §1.9.1.a by inserting the words “five
20 thousand dollars or” after the words “significant portion
21 of income’ means” and

22 On page four, §1.9.1.a by inserting the words “whi-
23 chever is less,” after the words “ten percent or more of
24 gross personal income for a calendar year”.

**§64-2-20(2)(12). Director of the department of natural
resources.**

1 The legislative rules filed in the state register on the
2 seventh day of August, one thousand nine hundred
3 eighty-six, relating to the director of the department of
4 natural resources (procedures for transporting and
5 dealing in furbearing animals), are authorized.

**§64-2-20(2)(23a). Department of natural resources;
commercial whitewater advisory
board.**

1 The legislative rules filed in the state register on the
2 twentieth day of December, one thousand nine hundred
3 eighty-six, modified by the commercial whitewater
4 advisory board to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on sixteenth day of January, one thousand nine
7 hundred eighty-seven, relating to the commercial
8 whitewater advisory board (commercial whitewater
9 outfitters), are authorized with the following
10 amendments:

11 On page 1, §2.1, by striking all of §2.1 and inserting
12 in lieu thereof the following: “2.1 Commercial white-
13 water outfitter means any person, partnership, corpora-
14 tion or other organization, or any combination thereof,
15 duly authorized and operating from within or from
16 without the state, which for monetary profit or gain,
17 provides whitewater expeditions or rents whitewater
18 craft or equipment for use in whitewater expeditions on
19 any river, portions of rivers or waters of the state.”

§64-2-20(5)(5). Water resources board.

1 The legislative rules filed in the state register on the

2 seventeenth day of October, one thousand nine hundred
3 eighty-five, and modified by the state water resources
4 board to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the twenty-fourth day of February, one
7 thousand nine hundred eighty-seven, relating to the
8 state water resources board (special regulations) are
9 authorized. These rules were proposed by the state
10 water resources board pursuant to section three, article
11 five-a, and section five, article five, of chapter twenty
12 of this code.

§64-2-20(5a)(3). Water resources board.

1 (a) The legislative rules filed in the state register on
2 the sixth day of January, one thousand nine hundred
3 eighty-three, relating to the state water resources board
4 (underground injection control program), are
5 authorized.

6 (b) The legislative rules filed in the state register on
7 the fifteenth day of November, one thousand nine
8 hundred eighty-three, relating to the state water
9 resources board (special regulations), are authorized.

10 (c) The legislative rules filed in the state register on
11 the third day of August, one thousand nine hundred
12 eighty-three, relating to the state water resources board
13 (groundwater protection standards), are authorized.

14 (d) The legislative rules filed in the state register on
15 the fifteenth day of November, one thousand nine
16 hundred eighty-three, relating to the state water
17 resources board (state national pollutant discharge
18 elimination system (NPDES) program), are authorized.

19 (e) The Legislature hereby authorizes and directs the
20 state water resources board to promulgate rules relating
21 to water quality standards in exact conformity with the
22 rules relating to water quality standards tendered to the
23 secretary of state on the seventh day of March, one
24 thousand nine hundred eighty-four by the executive
25 secretary of the state water resources board, to be
26 received and filed for inclusion in the state register by
27 the secretary of state.

28 (f) The legislative rules filed in the state register on
29 the seventh day of January, one thousand nine hundred
30 eighty-five, modified by the water resources board to
31 meet the objections of the legislative rule-making review
32 committee and refiled in the state register on the
33 thirteenth day of February, one thousand nine hundred
34 eighty-five, relating to the water resources board (water
35 quality standards), are authorized.

36 (g) The legislative rules filed in the state register on
37 the seventeenth day of October, one thousand nine
38 hundred eighty-five, modified by the state water
39 resources board to meet the objections of the legislative
40 rule-making review committee and refiled in the state
41 register on the eighth day of January, one thousand nine
42 hundred eighty-seven, and further modified by the state
43 water resources board to meet the objections of the
44 legislative rule-making review committee and refiled in
45 the state register on the twenty-fourth day of February,
46 one thousand nine hundred eighty-seven, relating to the
47 state water resources board (water quality standards),
48 are authorized.

49 (h) The legislative rules filed in the state register on
50 the seventeenth day of October, one thousand nine
51 hundred eighty-five, modified by the state water
52 resources board to meet the objections of the legislative
53 rule-making review committee and refiled in the state
54 register on the eighth day of January, one thousand nine
55 hundred eighty-seven, and further modified by the state
56 water resources board to meet the objections of the
57 legislative rule-making review committee and refiled in
58 the state register on the twenty-fourth day of February,
59 one thousand nine hundred eighty-seven, relating to the
60 state water resources board (state national pollutant
61 discharge elimination system (NPDES) program), are
62 authorized.

63 (i) The legislative rules filed in the state register on
64 the seventeenth day of October, one thousand nine
65 hundred eighty-five, and modified by the state water
66 resources board to meet the objections of the legislative
67 rule-making review committee and refiled in the state
68 register on the twenty-fourth day of February, one

69 thousand nine hundred eighty-seven, relating to the
70 state water resources board (underground injection
71 control program), are authorized.

72 (j) The legislative rules filed in the state register on
73 the seventeenth day of October, one thousand nine
74 hundred eighty-five, and modified by the state water
75 resources board to meet the objections of the legislative
76 rule-making review committee and refiled in the state
77 register on the twenty-fourth day of February, one
78 thousand nine hundred eighty-seven, relating to the
79 state water resources board (special regulations), are
80 authorized. These rules were proposed by the state
81 water resources board pursuant to section three, article
82 five-a, and section five, article five, of chapter twenty
83 of this code.

§64-2-20(5c)(6). Water development authority.

1 (a) The legislative rules filed in the state register on
2 the thirtieth day of August, one thousand nine hundred
3 eighty-four, relating to the water development authority
4 (hardship grant funds), are authorized.

5 (b) The legislative rules filed in the state register on
6 the fourteenth day of August, one thousand nine
7 hundred eighty-six, relating to the water development
8 authority (requirements governing disbursements of
9 loans and grants to governmental agencies for the
10 acquisition or construction of water development
11 projects), are authorized.

§64-2-20(5e)(6). Department of natural resources.

1 (a) The legislative rules filed in the state register on
2 the sixth day of January, one thousand nine hundred
3 eighty-four, relating to the department of natural
4 resources (hazardous waste management), are
5 authorized.

6 (b) The legislative rules filed in the state register on
7 the sixth day of January, one thousand nine hundred
8 eighty-four, relating to the air pollution control commis-
9 sion (to prevent and control air pollution from hazardous
10 waste treatment, storage or disposal facilities)(series

11 XXV), are authorized with the amendments set forth
12 below:

13 Page 3, §1.06, change the § title from "Enforcement"
14 to "Procedure"; place an "(a)" in front of the existing
15 paragraph and add the following:

16 "(b) Permit applications filed pursuant to this regu-
17 lation shall be processed in accordance with the
18 permitting procedures as set forth in code §20-5E of this
19 regulation. Permit procedures set forth in code §16-20
20 and any other regulation of this commission are not
21 applicable to any permit application filed pursuant to
22 this regulation."

23 Such rules shall also include a section which shall
24 read as follows:

25 "The commission shall report to the legislative rule-
26 making review committee as required by that commit-
27 tee, but in no event later than the first day of the regular
28 session of the Legislature in the year one thousand nine
29 hundred eighty-five. Such report shall include informa-
30 tion regarding the commission's data gathering efforts,
31 the development of compliance programs, the progress
32 in implementation, and such other matters as the
33 committee may require, pertaining to the regulations
34 hereby authorized."

35 (c) The legislative rules filed in the state register on
36 the third day of December, one thousand nine hundred
37 eighty-four, modified by the department of natural
38 resources to meet the objections of the legislative rule-
39 making review committee and refiled in the state
40 register on the thirteenth day of February, one thousand
41 nine hundred eighty-five, relating to the department of
42 natural resources (hazardous waste management), are
43 authorized.

44 (d) The legislative rules filed in the state register on
45 the eleventh day of December, one thousand nine
46 hundred eighty-five, modified by the department of
47 natural resources to meet the objections of the legislative
48 rule-making review committee and refiled in the state
49 register on the twentieth day of February, one thousand
50 nine hundred eighty-six, relating to the department of

51 natural resources (hazardous waste management), are
52 authorized.

53 (e) The legislative rules filed in the state register on
54 the fifth day of March, one thousand nine hundred
55 eighty-six, relating to the department of natural
56 resources (hazardous waste management), are
57 authorized.

58 (f) The legislative rules filed in the state register on
59 the tenth day of October, one thousand nine hundred
60 eighty-five, relating to the department of natural
61 resources (hazardous waste management: small quantity
62 generators and waste minimization certification), are
63 authorized with the amendments set forth below:

64 On page 1, § 3.1.4b, delete the word "or" in the
65 reference to "paragraph (g) or (j)" and insert in lieu
66 thereof the words "and, if applicable."

67 (g) The legislative rule filed in the state register on
68 the twenty-sixth day of September, one thousand nine
69 hundred eighty-six, modified by the department of
70 natural resources to meet the objections of the legislative
71 rule-making review committee and refiled in the state
72 register on the ninth day of December, one thousand
73 nine hundred eighty-six, relating to the department of
74 natural resources (hazardous waste management regu-
75 lations), are authorized.

76 (h) The legislative rule filed in the state register on
77 the ninth day of January, one thousand nine hundred
78 eighty-seven, relating to the department of natural
79 resources (hazardous waste management regulations),
80 are authorized.

81 (i) The legislative rule filed in the state register on the
82 fifth day of March, one thousand nine hundred eighty-
83 seven, relating to the department of natural resources
84 (hazardous waste management regulations, Series 35)
85 are authorized.

**§4-2-22(1)(13). Department of energy; director of the
division of oil and gas.**

1 (a) The legislative rules filed in the state register on

2 the eleventh day of August, one thousand nine hundred
3 eighty-six, modified by the director of the division of oil
4 and gas of the department of energy to meet the
5 objections of the legislative rule-making review commit-
6 tee and refiled in the state register on the fifteenth day
7 of December, one thousand nine hundred eighty-six,
8 relating to the director of the division of oil and gas of
9 the department of energy (oil and gas wells and other
10 wells), are authorized.

11 (b) The legislative rules filed in the state register on
12 the eleventh day of August, one thousand nine hundred
13 eighty-six, modified by the director of the oil and gas
14 division of the department of energy to meet the
15 objections of the legislative rule-making review commit-
16 tee and refiled in the state register on the fifteenth day
17 of December, one thousand nine hundred eighty-six,
18 relating to the director of the division of oil and gas of
19 the department of energy (certification of gas wells), are
20 authorized.

21 (c) The legislative rules filed in the state register on
22 the eleventh day of August, one thousand nine hundred
23 eighty-six, modified by the director of the division of oil
24 and gas of the department of energy to meet the
25 objections of the legislative rule-making review commit-
26 tee and refiled in the state register on the fifteenth day
27 of December, one thousand nine hundred eighty-six,
28 relating to the director of the division of oil and gas of
29 the department of energy (underground injection
30 control), are authorized.

31 (d) The legislative rules filed in the state register on
32 the eleventh day of August, one thousand nine hundred
33 eighty-six, modified by the director of the division of oil
34 and gas of the department of energy to meet the
35 objections of the legislative rule-making review commit-
36 tee and refiled in the state register on the fifteenth day
37 of December, one thousand nine hundred eighty-six,
38 relating to the director of the division of oil and gas of
39 the department of energy (state national pollutant
40 discharge elimination system (NPDES) program), are
41 authorized.

§64-2-22(1)(16). Commissioner of the department of energy.

1 (a) The legislative rules filed in the state register on
2 the eleventh day of August, one thousand nine hundred
3 eighty-six, modified by the commissioner of the depart-
4 ment of energy to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the fifteenth day of December, one thousand
7 nine hundred eighty-six, relating to the commissioner of
8 the department of energy (miscellaneous water pollution
9 control), are authorized.

10 (b) The legislative rules filed in the state register on
11 the eleventh day of August, one thousand nine hundred
12 eighty-six, modified by the commissioner of the depart-
13 ment of energy to meet the objections of the legislative
14 rule-making review committee and refiled in the state
15 register on the fifteenth day of December, one thousand
16 nine hundred eighty-six, relating to the commissioner of
17 the department of energy (dam control), are authorized.

18 (c) The legislative rules filed in the state register on
19 the eleventh day of August, one thousand nine hundred
20 eighty-six, modified by the commissioner of the depart-
21 ment of energy to meet the objections of the legislative
22 rule-making review committee and refiled in the state
23 register on the fifteenth day of December, one thousand
24 nine hundred eighty-six, relating to the commissioner of
25 the department of energy (solid waste management), are
26 authorized.

27 (d) The legislative rules filed in the state register on
28 the eleventh day of August, one thousand nine hundred
29 eighty-six, modified by the commissioner of the depart-
30 ment of energy to meet the objections of the legislative
31 rule-making review committee and refiled in the state
32 register on the fifteenth day of December, one thousand
33 nine hundred eighty-six, relating to the commissioner of
34 the department of energy (hazardous waste manage-
35 ment), are authorized.

36 (e) The rules authorized by the Legislature in section
37 twenty-two-a (three) (forty) of this article were also
38 proposed by the commissioner of the department of

39 energy pursuant to section sixteen, article one, chapter
40 twenty-two of this code.

§64-2-22(9)(6). Commissioner of the department of energy.

1 (a) The legislative rules filed in the state register on
2 the fourteenth day of November, one thousand nine
3 hundred eighty-six, modified by the commissioner of the
4 department of energy to meet the objections of the
5 legislative rule-making review committee and refiled in
6 the state register on the sixteenth day of December, one
7 thousand nine hundred eighty-six, relating to the
8 commissioner of the department of energy (standards
9 for certification of coal mine electricians), are autho-
10 rized with the following amendments:

11 "Page one, §2.1, subsection (a), following the second
12 word 'electrician' by striking the colon and inserting the
13 following: 'under the supervision required by section
14 4.1(d) of these rules' and a colon.

15 Page one, §2.1, subsection (a), by deleting all of
16 subdivision 6) and renumbering the subsequent
17 subdivisions.

18 Page two, §2.1, subsection (a), by deleting all of
19 subdivision 9).

20 Page two, §2.1, subsection (b), by deleting all of
21 subdivision 14) and inserting in lieu thereof a new
22 subdivision 14) to read as follows: '14) Replace blown
23 fuses on trolley poles and nips.'

24 Page five, §4.1, subsection (d), line three, following the
25 words 'certified electrician prior' by inserting the words
26 'to any work being performed and again prior'."

27 (b) The legislative rules filed in the state register on
28 the fifteenth day of December, one thousand nine
29 hundred eighty-six, modified by the commissioner of the
30 department of energy to meet the objections of the
31 legislative rule-making review committee and refiled in
32 the state register on the twenty-first day of January, one
33 thousand nine hundred eighty-seven, relating to the
34 commissioner of the department of energy (safety

35 training program for prospective underground coal
36 miners in West Virginia), are authorized.

37 (c) The legislative rules filed in the state register on
38 the fifteenth day of December, one thousand nine
39 hundred eighty-six, modified by the commissioner of the
40 department of energy to meet the objections of the
41 legislative rule-making review committee and refiled in
42 the state register on the twenty-first day of January, one
43 thousand nine hundred eighty-seven, relating to the
44 commissioner of the department of energy (safety
45 training program for prospective surface coal miners in
46 West Virginia), are authorized.

47 (d) The legislative rules filed in the state register on
48 the third day of April, one thousand nine hundred
49 eighty-seven, relating to the department of energy
50 (standards for certification of underground belt examin-
51 ers for underground coal mines) are authorized.

§64-2-22a(3)(40). Commissioner of the department of energy.

1 The legislative rules filed in the state register on the
2 twelfth day of January, one thousand nine hundred
3 eighty-seven, modified by the commissioner of the
4 department of energy to meet the objections of the
5 legislative rule-making review committee and refiled in
6 the state register on the twentieth day of February, one
7 thousand nine hundred eighty-seven, relating to the
8 commissioner of the department of energy (state
9 national pollutant discharge elimination system
10 (NPDES) for mines and minerals), are authorized.

§64-2-27(9)(1). State board of health.

1 (a) The legislative rules filed in the state register on
2 the fourteenth day of November, one thousand nine
3 hundred eighty-three, relating to the state board of
4 health (licensure of behavioral health centers), are
5 authorized with the 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
8 "within twenty-four hours after receiving a report of a
9 complaint."

10 (b) The legislative rules filed in the state register on
11 the twenty-first day of November, one thousand nine
12 hundred eighty-six, modified by the state board of
13 health to meet the objections of the legislative rule-
14 making review committee and refiled in the state
15 register on the twenty-third day of December, one
16 thousand nine hundred eighty-six, relating to the state
17 board of health (licensure of behavioral health centers),
18 are authorized.

§64-2-27(17)(3). 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 and on the twenty-first day of November,
4 one thousand nine hundred eighty-six and authorized by
5 the Legislature in section twenty-seven (nine) (one) of
6 this article, were also proposed by the state board of
7 health pursuant to section three, article seventeen,
8 chapter twenty-seven of this code.

§64-2-29(3)(5). State fire commission.

1 (a) The legislative rules filed in the state register on
2 the third day of January, one thousand nine hundred
3 eighty-four, relating to the state fire commission (state
4 fire code) are authorized with the amendments set forth
5 below:

6 Page 1, § 106, line 1, after the word "to" add the words
7 "personal care homes caring for five or less patients or";
8 and

9 Page 26, § 11.06(3)A.(3). Strike the period at the end
10 of the sentence and add the words "except for existing
11 sleeping rooms owned by the state and located in
12 dormitories or state parks."

13 (b) The legislative rules filed in the state register on
14 the first day of August, one thousand nine hundred
15 eighty-six, modified by the state fire commission to meet
16 the objection of the legislative rule-making review
17 committee and refiled in the state register on the
18 twenty-eighth day of October, one thousand nine
19 hundred eighty-six, relating to the state fire commission

20 (hazardous substance emergency response training
21 program), are authorized.

§64-2-29(6)(10). Civil service commission.

1 The legislative rules filed in the state register on the
2 nineteenth day of November, one thousand nine hundred
3 eighty-six, modified by the civil service commission to
4 meet the objection of the legislative rule-making review
5 committee and refiled in the state register on the
6 fifteenth day of December, one thousand nine hundred
7 eighty-six, relating to the civil service commission (civil
8 service system), are authorized.

§64-2-30(6)(3). Board of embalmers and funeral directors.

1 (a) The legislative rules filed in the state register on
2 the twenty-seventh day of July, one thousand nine
3 hundred eighty-four, modified by the board of em-
4 balmers and funeral directors to meet the objections of
5 the legislative rule-making review committee and
6 refiled in the state register on the ninth day of January,
7 one thousand nine hundred eighty-five, relating to the
8 board of embalmers and funeral directors (apprentice-
9 ship), are authorized.

10 (b) The legislative rules filed in the state register on
11 the sixteenth day of October, one thousand nine hundred
12 eighty-five, modified by the board of embalmers and
13 funeral directors to meet the objections of the legislative
14 rule-making review committee and refiled in the state
15 register on the eighteenth day of July, one thousand nine
16 hundred eighty-six, relating to the board of embalmers
17 and funeral directors (governing the board of em-
18 balmers and funeral directors), are authorized.

§64-2-30(7a)(5). West Virginia board of examiners for licensed practical nurses.

1 (a) The legislative rules filed in the state register on
2 the thirtieth day of July, one thousand nine hundred
3 eighty-six, modified by the West Virginia board of
4 examiners for licensed practical nurses to meet the
5 objections of the legislative rule-making review commit-
6 tee and refiled in the state register on the thirtieth day
7 of September, one thousand nine hundred eighty-six,

8 relating to the West Virginia board of examiners for
9 licensed practical nurses (policies relating to licensure
10 of the licensed practical nurse), are authorized.

11 (b) The legislative rules filed in the state register on
12 the thirtieth day of July, one thousand nine hundred
13 eighty-six, relating to the West Virginia board of
14 examiners for licensed practical nurses (legal standards
15 of nursing practice for the licensed practical nurse) are
16 authorized.

17 (c) The legislative rules filed in the state register on
18 the thirtieth day of July, one thousand nine hundred
19 eighty-six, relating to the West Virginia board of
20 examiners for licensed practical nurses (fees for services
21 rendered by the board) are authorized.

§64-2-31a(8b)(5). Commissioner of banking.

1 The legislative rules filed in the state register on the
2 seventh day of November, one thousand nine hundred
3 eighty-six, modified by the commissioner of banking to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 eleventh day of December, one thousand nine hundred
7 eighty-six, relating to the commissioner of banking
8 (implementing the West Virginia community reinvest-
9 ment act), are authorized.

§64-2-33(2)(10). Insurance commissioner.

1 (a) The legislative rules filed in the state register on
2 the eighteenth day of October, one thousand nine
3 hundred eighty-three, relating to the insurance commis-
4 sioner (excess line brokers), are authorized.

5 (b) The legislative rules filed in the state register on
6 the eighteenth day of August, one thousand nine
7 hundred eighty-six, modified by the insurance commis-
8 sioner to meet the objection of the legislative rule-
9 making review committee and refiled in the state
10 register on the twelfth day of December, one thousand
11 nine hundred eighty-six, relating to the insurance
12 commissioner (examiners' compensation, qualification
13 and classification), are authorized.

§64-2-33(30)(15). State board of risk and insurance management.

1 The legislative rules filed in the state register on the
2 twenty-sixth day of November, one thousand nine
3 hundred eighty-five, modified by the state board of risk
4 and insurance management to meet the objections of the
5 legislative rule-making review committee and refiled in
6 the state register on the eighth day of December, one
7 thousand nine hundred eighty-six, relating to the state
8 board of risk and insurance management (mine subsi-
9 dence insurance program), are authorized.

§64-2-46a(6)(103). Attorney general.

1 (a) The legislative rules filed in the state register on
2 the nineteenth day of September, one thousand nine
3 hundred eighty-six, modified by the attorney general to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the first
6 day of December, one thousand nine hundred eighty-six,
7 relating to the attorney general (prevention of unfair or
8 deceptive acts or practices in home improvement and
9 home construction transactions), are authorized. These
10 rules were proposed by the attorney general pursuant
11 to section one hundred three, article six and section one
12 hundred two, article seven of chapter forty-six-a of this
13 code with the following amendments:

14 "Amending the title to the proposed legislative rule
15 wherever said title may appear, on lines three and four
16 thereof, by striking the words 'and home construction'.

17 On the index page following '3.' by striking the words
18 'and home construction'.

19 On page 1, §1.2, line three, after the first word
20 'transactions' on line three, by striking the comma and
21 the words 'and home construction transactions' and on
22 line five, by striking the period and inserting the words
23 'but shall not cover new construction of single-family
24 dwellings or rebuilding all or substantially all of an
25 existing or preexisting single-family dwelling.'

26 Page 2, section 2.2 by striking all of lines seven and
27 eight and inserting in lieu thereof the following:

28 'unless: (a) it appears in printed or typed face larger
29 than the largest type used in the written contract,
30 apart'.

31 On page 2, section 2.4, by striking all of section 2.4
32 and inserting in lieu thereof a new section 2.4, to read
33 as follows:

34 '2.4 "Home Construction" means, for the purpose of
35 this Rule, the repair, remodeling or the building of
36 additions to existing single-family dwelling units,
37 including single-family homes, condominium units or
38 any other dwelling unit to be used by any person
39 primarily for personal or family use, but shall not
40 include new single-family home construction or the
41 rebuilding of all or substantially all of an existing or
42 preexisting single-family dwelling.'

43 Page 3, section 2.6, on line two thereof, after the
44 second comma by inserting the word 'replacement'.

45 Page 3, section 3., by striking the words 'and home
46 construction' from the section heading.

47 Page 3, section 3.1, lines one and two, by striking the
48 words 'or home construction'.

49 Page 4, section 3.1.4, on lines one and two thereof, by
50 striking the words 'or home construction'.

51 Page 4, section 3.1.8, on line two thereof, by striking
52 the words 'or home construction'.

53 Page 4, section 3.1.9, on lines two and three thereof,
54 by striking the words 'or home construction'.

55 Page 5, section 3.1.12, on lines one and two thereof,
56 by striking the words 'or home construction'.

57 Page 6, section 3.1.26, by striking all of section 3.1.26
58 and renumbering the subsequent subsections.

59 Page 7, section 3.1.29, on lines one and two thereof,
60 by striking the words 'or home construction'.

61 Page 7, section 3.1.29, on line six thereof, following the
62 word 'contract' by inserting a period and striking the
63 remainder of the section.

64 Page 7, following section 3.1.29 by adding a new
65 section to be designated section 3.1.29, to read as follows:

66 'failed to file a certificate in the office of the Clerk of
67 the County Commission in the county in which the
68 principal place of business of the seller is located, setting
69 forth the assumed name in or by which the business is
70 being conducted in conformity with the provisions of
71 Chapter 47, Article 8, Section 2 of the Code of West
72 Virginia, 1931, as amended.'

73 Page 7, section 3.2, on lines two and three thereof, by
74 striking the words, 'or home solicitation sale of home
75 construction' and the comma on line three.

76 Page 9, section 4.1, on line eight thereof, by deleting
77 the period and inserting the following:

78 'to the extent permitted by statute' and a period.

79 Page 10, section 4.2, on line 9 thereof, by striking the
80 period and inserting the following:

81 'to the extent permitted by statute' and a period."

82 (b) The legislative rules filed in the state register on
83 the twenty-third day of September, one thousand nine
84 hundred eighty-six, modified by the attorney general to
85 meet the objections of the legislative rule-making review
86 committee and refiled in the state register on the first
87 day of December, one thousand nine hundred eighty-six,
88 relating to the attorney general (prevention of unfair or
89 deceptive acts or practices in the sale of damaged goods
90 or products), are authorized. These rules were proposed
91 by the attorney general pursuant to section one hundred
92 three, article six and section one hundred two, article
93 seven of chapter forty-six-a of the code.

§64-2-46a(7)(102). Attorney general.

1 The legislative rules authorized by the Legislature in
2 section forty-six-a (six) (one hundred three) of this
3 article were also proposed by the attorney general
4 pursuant to section one hundred two, article seven,
5 chapter forty-six-a of this code.

CHAPTER 77

(Com. Sub. for H. B. 2386—By Delegate Hatcher)

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

AN ACT to amend and reenact section four, article one, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to notice of sale under a deed of trust; notice to be given by Class II advertisement; removing provisions for service by posting; and providing for service on the grantor by certified mail, return receipt requested.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§38-1-4. Notice of sale.

1 Unless property is to be sold under a deed of trust
2 executed and delivered prior to the first day of July, one
3 thousand nine hundred eighty, which contains a provi-
4 sion waiving the requirement of published notice, the
5 trustee shall publish a notice of a trustee's sale as a Class
6 II legal advertisement in compliance with the provisions
7 of article three, chapter fifty-nine of this code, and the
8 publication area for such publication shall be the county
9 where the property is located: *Provided*, That any notice
10 of sale published since the first day of July, one thousand
11 nine hundred eighty, and prior to the effective date of
12 this section, shall be deemed to have met the
13 requirements of the section if such were published as
14 Class II legal advertisements, in compliance with the
15 provisions of article three, chapter fifty-nine of this code,
16 in that by the enactment of the acts of the Legislature,
17 regular session, one thousand nine hundred eighty, the
18 Legislature intended that all notice of sales pursuant to
19 trust deeds were to have been published as Class II legal
20 advertisements.

21 Except as expressly provided in this section, no trust
22 deed shall waive the requirements of publication of
23 notice required by this section.

24 In all cases, a copy of such notice shall be served on
25 the grantor in such trust deed, or his agent or personal
26 representative, by certified mail, return receipt re-
27 quested, directed to the address shown by the grantors
28 on the deed of trust or such other address given to the
29 beneficiary of said trust deed or said beneficiary's agent
30 or assignee in writing by the said grantor subsequent
31 to the execution and delivery of the trust deed and notice
32 shall be deemed complete when such notice is mailed to
33 the aforesaid address, notwithstanding the fact that
34 such mail may be returned as refused or undeliverable
35 and shall be served by certified mail, at least twenty
36 days prior to the sale, upon any subordinate lienholder
37 who has previously notified the primary lienholder by
38 certified mail of the existence of a subordinate lien.
39 Every trust deed shall state the address to which such
40 notice shall be mailed.

41 Every notice of sale by a trustee under a trust deed
42 shall show the following particulars: (a) The time and
43 place of sale; (b) the names of the parties to the deed
44 under which it will be made; (c) the date of the deed;
45 (d) the office and book in which it is recorded; (e) the
46 quantity and description of the land or other property
47 or both conveyed thereby; and (f) the terms of sale.

48 Notice to a subordinate lienholder shall be complete
49 when such notice is mailed in accordance with the
50 provisions of this section, directed to the address of the
51 subordinate lienholder as provided by such subordinate
52 lienholder in the notice of existence of a subordinate
53 lien.

54 The provisions of this section relating to the methods
55 of serving notice are not exclusive. In addition to, but
56 not in lieu of, any service of notice required by the
57 provisions of this section, service of such notice may be
58 also made by any other method authorized for the
59 service of original process in the circuit courts of this

60 state by statute or by the rules of civil procedure for
61 trial courts of record.

62 An individual who purchases property at a trustee's
63 sale is under no duty to ascertain whether notice was
64 given to subordinate lienholders in accordance with the
65 provisions of this section, and such right, title and
66 interest as the purchaser may acquire shall not be
67 affected by defects in such notice or the service thereof,
68 if the purchaser is otherwise a bona fide purchaser for
69 value.

CHAPTER 78

(Com. Sub. for H. B. 2054—By Delegate W. Martin)

[Passed January 30, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and ten, article twelve, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to and requiring the release of liens when debt secured thereby is fully satisfied if the lien is properly recorded; requiring that such release must be provided within thirty days of a request therefor; legal action on refusal of lienholder to furnish and execute a release of lien; and attorney fees and court costs taxed against party so refusing.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. RELEASE AND ASSIGNMENT OF LIENS.

§38-12-1. When release of lien required; requisites thereof.

§38-12-10. Action on refusal of lienholder to execute release.

§38-12-1. When release of lien required; requisites thereof.

1 (a) Every person entitled to the benefit of any lien on
2 any estate, real or personal, or to the money secured
3 thereby, whether the lien was created by conveyance,
4 judgment, decree, lis pendens, notice of attachment,
5 deed of trust, contract or otherwise, shall be required
6 to furnish and execute an apt and proper written release
7 thereof free of charge to the debtor whose obligation
8 secured by such lien has been fully paid and satisfied,
9 if the lien is of record in the proper county. Such release
10 shall be executed and furnished to the debtor within
11 thirty days after the debt has been satisfied.

12 (b) Such release of lien shall be executed by the
13 lienholder and acknowledged before the clerk of the
14 county commission in whose office the lien is recorded
15 or before such other person authorized to take acknowl-
16 edgments of deeds. Such written release shall be deemed
17 sufficient if it describe the lien to be released by any
18 words that will identify and show an intent to discharge
19 the same. Releases may also be made according to the
20 provisions of section two of this article.

§38-12-10. Action on refusal of lienholder to execute release.

1 In case of the failure of the party holding such lien
2 to furnish and execute an apt and proper release upon
3 request of the party entitled thereto as required by
4 section one of this article, the circuit court having
5 jurisdiction may, on motion, after reasonable notice to
6 the party so failing, and if no good cause be shown
7 against it, direct the clerk of the county commission to
8 execute such release, and it shall thereupon have the
9 effect of releases executed under section one of this
10 article. The proceedings shall be at the cost of the
11 lienholder who so refuses without good cause and the
12 court shall also award reasonable attorney fees and
13 court costs to the person entitled to such release if such
14 person be the prevailing party.

CHAPTER 79

(Com. Sub. for S. B. 69—By Senators Tucker and Manchin)

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

AN ACT to amend and reenact sections three and four, article one-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to linked deposit loans; loan cap; application for loan priority; loan package; and eligibility criteria.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. LINKED DEPOSIT PROGRAM.

§12-1A-3. Limitations on investment in linked deposits.

§12-1A-4. Applications for loan priority; loan package.

§12-1A-3. Limitations on investment in linked deposits.

1 (a) The state treasurer may invest in linked deposits:
2 *Provided*, That at the time of the placement of the linked
3 deposit not more than ten percent of the state's total
4 investment portfolio is so invested. The total amount so
5 deposited at any one time shall not exceed, in the
6 aggregate, two hundred twenty-five million dollars, of
7 which fifty million dollars shall be provided for linked
8 deposits to West Virginia flood victims from the twenty-
9 nine counties eligible for federal disaster aid as listed
10 by the federal emergency management agency:
11 *Provided, however*, That after the first day of April, one
12 thousand nine hundred eighty-seven, the state treasurer
13 shall reserve ten million dollars of the unallocated
14 aggregate for linked deposits to such West Virginia
15 flood victims and may use the remaining balance of such
16 unallocated moneys in the regular linked deposit
17 program: *Provided further*, That after the first day of
18 January, one thousand nine hundred eighty-eight, the

19 remaining balance of unallocated moneys may be used
20 in the regular linked deposit program.

21 (b) Small business linked deposit funds shall not be
22 used to provide each applicant with more than fifty
23 thousand dollars for a reduced rate loan for each
24 nonmanufacturing job created or preserved or provide
25 more than one hundred twenty-five thousand dollars for
26 a reduced rate loan for each manufacturing job created
27 or preserved. This subsection shall not preclude any
28 flood victim from applying for a linked deposit under
29 the flood program.

§12-1A-4. Applications for loan priority; loan package.

1 (a) An eligible lending institution that desires to
2 receive a linked deposit shall accept and review
3 applications for loans from eligible small businesses.
4 The lending institution shall apply all usual lending
5 standards to determine the creditworthiness of each
6 eligible small business.

7 (b) An eligible small business shall certify on its loan
8 application that the reduced rate loan will be used
9 exclusively to create new jobs or preserve existing jobs
10 and employment opportunities. An eligible small
11 business shall make a sworn affidavit stating that the
12 reduced rate loan will not be used to refinance an
13 existing debt, unless it can be demonstrated to show the
14 business will fail if not granted such loan. Whoever
15 knowingly makes a false statement concerning such
16 application shall be prohibited from entering into the
17 linked deposit loan program.

18 (c) In considering which eligible small businesses
19 should receive reduced rate loans, the eligible lending
20 institution shall give priority to the economic needs of
21 the area in which the business is located, including
22 whether the business is located in a county declared to
23 be a federal disaster area by the federal emergency
24 management agency, and the number of jobs to be
25 created. If jobs are to be preserved by the receipt of such
26 loan, the eligible lending institution shall decide
27 between small businesses that had no profit in the last
28 tax year verified by independent audit filed for relief

29 under the federal bankruptcy laws in the past year or
30 has been adversely affected by a nonreimbursed
31 casualty loss due to a natural disaster. An eligible small
32 business shall make a sworn affidavit stating that one
33 of the above mentioned circumstances applies to their
34 business. There shall also be a continuous internal audit
35 conducted by the state treasurer which shall be made
36 available to the Legislature annually.

37 (d) The eligible financial institution shall forward to
38 the state treasurer a linked deposit loan package, in the
39 form and manner as prescribed by the state treasurer.
40 The package shall include such information as required
41 by the state treasurer, including the amount of the loan
42 requested and the number of jobs to be created or
43 sustained by each eligible small business. The institution
44 shall certify that each applicant is an eligible small
45 business, and shall, for each business, certify the present
46 borrowing rate applicable to each specific eligible
47 business.

CHAPTER 80

(Com. Sub. for H. B. 2498—By Delegate Love)

[Passed March 19, 1987; in effect from passage. Approved by the Governor.]

AN ACT to repeal section nine-b, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, eight and nine of said article one, all relating to the salary of magistrates; magistrate court clerks; and magistrate court deputy clerks and magistrate assistants.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COURTS AND OFFICERS.

§50-1-3. Salary of magistrates.

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.

§50-1-9. Magistrate assistants; salary; duties.

§50-1-3. Salary of magistrates.

1 The salary of each magistrate shall be paid by the
2 state. Beginning on the first day of July, one thousand
3 nine hundred eighty-seven, magistrates who serve less
4 than ten thousand in population shall be paid annual
5 salaries of nineteen thousand dollars; magistrates who
6 serve ten thousand or more in population but less than
7 fifteen thousand in population shall be paid annual
8 salaries of twenty-five thousand one hundred twenty-five
9 dollars. Magistrates who serve fifteen thousand or more
10 in population shall be paid annual salaries of twenty-five
11 thousand one hundred twenty-five dollars: *Provided,*
12 That on and after the first day of January, one thousand
13 nine hundred eighty-nine, magistrates who serve less
14 than ten thousand in population shall be paid annual
15 salaries of twenty thousand six hundred twenty-five
16 dollars and magistrates who serve ten thousand or more
17 in population shall be paid annual salaries of twenty-
18 seven thousand dollars. For the purpose of determining
19 the population served by each magistrate, the number
20 of magistrates authorized for each county shall be
21 divided into the population of each county. Magistrates
22 shall be paid once a month.

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.

1 In each county having three or more magistrates the
2 judge of the circuit court or the chief judge thereof, if
3 there is more than one judge of the circuit court, shall
4 appoint a magistrate court clerk. In all other counties
5 such judge may appoint a magistrate court clerk or may
6 by rule require the duties of the magistrate court clerk
7 to be performed by the clerk of the circuit court, in
8 which event such circuit court clerk shall be entitled to
9 additional compensation in the amount of two thousand
10 five hundred dollars per year. The magistrate court

11 clerk shall serve at the will and pleasure of such circuit
12 judge.

13 Magistrate court clerks shall be paid a monthly salary
14 by the state. Beginning on the first day of July, one
15 thousand nine hundred eighty-seven, magistrate court
16 clerks serving magistrates who serve less than ten
17 thousand in population shall be paid up to one thousand
18 thirty-one dollars per month; magistrate court clerks
19 serving magistrates who serve ten thousand or more in
20 population but less than fifteen thousand in population
21 shall be paid up to one thousand five hundred sixty-six
22 dollars per month and magistrate court clerks serving
23 magistrates who serve fifteen thousand or more in
24 population shall be paid up to one thousand five hundred
25 sixty-six dollars per month: *Provided*, That on and after
26 the first day of January, one thousand nine hundred
27 eighty-nine, magistrate court clerks serving magistrates
28 who serve less than ten thousand in population shall be
29 paid up to one thousand two hundred forty-one dollars
30 and magistrate court clerks serving magistrates who
31 serve ten thousand or more in population shall be paid
32 up to one thousand six hundred fifty dollars per month.
33 For the purpose of determining the population served
34 by each magistrate, the number of magistrates autho-
35 rized for each county shall be divided into the population
36 of each county. The salary of the magistrate court clerk
37 shall be established by the judge of the circuit court, or
38 the chief judge thereof if there is more than one judge
39 of the circuit court, within the limits set forth in this
40 section.

41 In addition to other duties as may be imposed by the
42 provisions of this chapter or by the rules of the supreme
43 court of appeals or the judge of the circuit court, or the
44 chief judge thereof if there is more than one judge of
45 the circuit court, it shall be the duty of the magistrate
46 court clerk to establish and maintain appropriate
47 dockets and records in a centralized system for the
48 magistrate court, to assist in the preparation of such
49 reports as may be required of the court and to carry out
50 on behalf of the magistrates or chief magistrate if a
51 chief magistrate is appointed, the administrative duties
52 of the court.

53 The magistrate court clerk or, if there is no magis-
54 trate court clerk in the county, the clerk of the circuit
55 court shall have the authority to issue all manner of civil
56 process and to require the enforcement of subpoenas and
57 subpoenas duces tecum in magistrate court.

§50-1-9. Magistrate assistants; salary; duties.

1 In each county there shall be one magistrate assistant
2 for each magistrate. Each magistrate assistant shall be
3 appointed by the magistrate under whose authority and
4 supervision and at whose will and pleasure he shall
5 serve. Such assistant shall not be a member of the
6 immediate family of any magistrate and shall not have
7 been convicted of a felony or any misdemeanor involving
8 moral turpitude and shall reside in the county where
9 appointed. For the purpose of this section, immediate
10 family shall mean the relationships of mother, father,
11 sister, brother, child or spouse.

12 A magistrate assistant shall have such duties, clerical
13 or otherwise, as may be assigned by the magistrate and
14 as may be prescribed by the rules of the supreme court
15 of appeals or the judge of the circuit court, or the chief
16 judge thereof if there is more than one judge of the
17 circuit court. In addition to these duties, magistrate
18 assistants shall perform and be accountable to the
19 magistrate court clerks with respect to the following
20 duties:

- 21 (1) The preparation of summons in civil actions;
- 22 (2) The assignment of civil actions to the various
23 magistrates;
- 24 (3) The collection of all costs, fees, fines, forfeitures
25 and penalties which may be payable to the court;
- 26 (4) The submission of such moneys, along with an
27 accounting thereof, to appropriate authorities as
28 provided by law;
- 29 (5) The daily disposition of closed files which are to
30 be located in the magistrate clerk's office;

31 (6) All duties related to the gathering of information
32 and documents necessary for the preparation of administrative reports and documents required by the rules
33 of the supreme court of appeals or the judge of the
34 circuit court, or the chief judge thereof if there is more
35 than one judge of the circuit court;
36

37 (7) All duties relating to the notification, certification
38 and payment of jurors serving pursuant to the terms of
39 this chapter;

40 (8) All other duties or responsibilities whereby the
41 magistrate assistant shall be accountable to the magistrate court clerk as the magistrate shall determine.
42

43 Magistrates assistants shall be paid a monthly salary
44 by the state. Beginning on the first day of July, one
45 thousand nine hundred eighty-seven, magistrate assistants serving magistrates who serve less than ten
46 thousand in population shall be paid up to eight hundred
47 thirty-eight dollars per month; magistrate assistants
48 serving magistrates who serve ten thousand or more in
49 population but less than fifteen thousand in population
50 shall be paid up to one thousand ninety-five dollars per
51 month and magistrate assistants serving magistrates
52 who serve fifteen thousand or more in population shall
53 be paid up to one thousand ninety-five dollars per
54 month: *Provided*, That on and after the first day of
55 January, one thousand nine hundred eighty-nine,
56 magistrate assistants serving magistrates who serve less
57 than ten thousand in population shall be paid up to nine
58 hundred sixty-seven dollars per month and magistrate
59 assistants serving magistrates who serve ten thousand
60 or more in population shall be paid up to one thousand
61 two hundred twenty-five dollars per month. For the
62 purpose of determining the population served by each
63 magistrate, the number of magistrates authorized for
64 each county shall be divided into the population of each
65 county. The salary of the magistrate assistant shall be
66 established by the magistrate within the limits set forth
67 in this section.
68

CHAPTER 81

(S. B. 751—Originating in the Senate Committee on Agriculture)

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

AN ACT to amend and reenact section thirteen, article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of commerce, division of parks and recreation; renaming the improved recreational area of Camp Creek State Forest in Mercer County as the "Camp Creek State Park" and continuing it under the authority of the division of parks and recreation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-13. Division of parks and recreation; purpose; powers and duties generally.

1 It shall be the duty of the division of parks and
2 recreation to have within its jurisdiction and
3 supervision:

4 (a) All state parks and state recreation areas, includ-
5 ing all lodges, cabins, swimming pools, motorboating
6 and all other recreational facilities therein, except the
7 roads therein which, by reason of section one, article
8 four, chapter seventeen of this code, are transferred to
9 the state road system and to the responsibility of the
10 commissioner of highways with respect to the construc-
11 tion, reconstruction and maintenance of the roads or any
12 future roads for public usage on publicly owned lands
13 in future state parks, state forests and public hunting
14 and fishing areas;

15 (b) The authority and responsibility to do the neces-
16 sary cutting and planting of vegetation along road
17 rights-of-way in state parks and recreational areas;

18 (c) The administration of all laws and regulations
19 relating to the establishment, development, protection,
20 use and enjoyment of all state parks and state recrea-
21 tional facilities consistent with the provisions of this
22 article: *Provided*, That nothing herein shall be construed
23 to assign to the division of parks and recreation of the
24 department of commerce the law-enforcement duties set
25 forth in article seven, chapter twenty of this code, which
26 duties shall remain the responsibility of the department
27 of natural resources;

28 (d) The Berkeley Springs sanitarium in Morgan
29 County shall be continued as a state recreational facility
30 under the jurisdiction and supervision of the department
31 of commerce and shall be managed, directed and
32 controlled as prescribed here in this article and in
33 article one, chapter twenty of this code.

34 The commissioner shall have and is hereby granted all
35 of the powers and authority and shall perform all of the
36 functions and duties with regard to Berkeley Springs
37 sanitarium that were previously vested in and per-
38 formed by the director of the department of natural
39 resources, who shall no longer have such power and
40 authority and whose power and authority with regard
41 to Berkeley Springs sanitarium is hereby abolished;

42 (e) The Washington Carver camp in Fayette County
43 is hereby transferred from the department of natural
44 resources to the commissioner who shall have the
45 jurisdiction and supervision of the camp subject to the
46 jurisdiction and authority of the department of culture
47 and history as provided under section thirteen, article
48 one, chapter twenty-nine of this code. The commissioner
49 shall manage the Washington Carver camp as a state
50 recreational facility and a component of the state park
51 system;

52 (f) The improved recreational area of Camp Creek
53 State Forest in Mercer County, as delineated according
54 to section three, article one-a, chapter nineteen of this
55 code, is hereby renamed as the Camp Creek State Park
56 and under that name shall be managed as a state
57 recreational facility; and

58 (g) The commissioner of the department of commerce
59 shall be primarily responsible for the execution and
60 administration of the provisions herein as an integral
61 part of the parks and recreation program of the state
62 and shall organize and staff his division for the orderly,
63 efficient and economical accomplishment of these ends.

CHAPTER 82

(H. B. 3155—By Mr. Speaker, Mr. Chambers)

[Passed April 7, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, fourteen, twenty, twenty-four, twenty-six, thirty-seven, forty-three, forty-six, fifty-five, fifty-six, fifty-eight, sixty-three and seventy-seven, article two, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article two by adding thereto a new section, designated section seventy-one-a; and to amend and reenact section twenty-two (nine) (six), article two, chapter sixty-four of said code, all relating to underground mines generally; coal mine plans of ventilation and approval of director; fans; safety inspections; removal of gases; preparation of danger signal by fire boss; control of coal dust; rock dusting; specific requirements as to roof supports; haulage roads and equipment; shelter holes; signals; inspection; electrical equipment in mines; welding and cutting; protective equipment and clothing; checking systems; fire protection; certificate of approval for coal mines; right to refuse to work in unsafe area; certain practices prohibited; monthly report by operator of mine and providing certain exceptions therefor; and authorizing the promulgation of certain legislative rules and regulations relating to the standards for certification of underground belt examiners for underground coal mines.

Be it enacted by the Legislature of West Virginia:

That sections two, three, fourteen, twenty, twenty-four, twenty-six, thirty-seven, forty-three, forty-six, fifty-four, fifty five, fifty-six, fifty-eight, sixty-three and seventy-seven, article

two, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article two be further amended by adding thereto a new section, designated section seventy-one-a; and that section twenty-two (nine) (six), article two, chapter sixty-four of said code, be amended and reenacted, all to read as follows:

Chapter

22A. Mines and Minerals.

64. Legislative Rules.

CHAPTER 22A. MINES AND MINERALS.

ARTICLE 2. UNDERGROUND MINES.

- §22A-2-2. Plan of ventilation; approved by director of the division of mines and minerals.
- §22A-2-3. Fans.
- §22A-2-14. Safety inspections; removal of gases.
- §22A-2-20. Preparation of danger signal by fire boss or certified person acting as such prior to examination; report; records open for inspection.
- §22A-2-24. Control of coal dust; rock dusting.
- §22A-2-26. Roof support; specific requirements.
- §22A-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.
- §22A-2-43. Electric equipment in mines.
- §22A-2-46. Welding and cutting.
- §22A-2-55. Protective equipment and clothing.
- §22A-2-56. Checking systems.
- §22A-2-58. Fire protection.
- §22A-2-63. No mine to be opened or reopened without prior approval of commissioner of the department of energy; approval fee; extension of certificate of approval; certificates not transferable; section to be printed on certificates.
- §22A-2-71a. Right of miner to refuse to work in an unsafe area or unsafe manner.
- §22A-2-77. Monthly report by operator of mine; exception as to certain inactive mines.

§22A-2-2. Plan of ventilation; approval by director of the division of mines and minerals.

- 1 Every operator of a coal mine, before making any new
- 2 or additional openings, shall submit to the director, for
- 3 his information and approval, a general plan showing
- 4 the proposed system of ventilation and ventilating
- 5 equipment of the openings, with their location and

6 relative positions to adjacent developments; no such new
7 or additional openings shall be made until approved by
8 the director, in consultation with the deputy directors
9 of permitting and safety, health and training. The
10 operator shall deliver to the miners' representative
11 employed by the operator at the mine a copy of the
12 operator's proposed annual ventilation plan at least ten
13 days prior to the date of submission. The miners'
14 representative shall be afforded the opportunity to
15 submit written comments to the operator prior to such
16 submission; in addition the miners' representative may
17 submit written comments to the director. The director
18 shall promptly approve any such plans submitted, if the
19 proposed system of ventilation and ventilating equip-
20 ment meet the requirements of this article.

§22A-2-3. Fans.

1 (a) The ventilation of mines, the systems for which
2 extend for more than two hundred feet underground
3 and which are opened after the effective date of this
4 article, shall be produced by a mechanically operated
5 fan or mechanically operated fans. Ventilation by means
6 of a furnace is prohibited in any mine. The fan or fans
7 shall be kept in continuous operation, unless written
8 permission to do otherwise be granted by the director.
9 In case of interruption to a ventilating fan or its
10 machinery whereby the ventilation of the mine is
11 interrupted, immediate action shall be taken by the
12 mine operator or his management personnel, in all
13 mines, to cut off the power and withdraw the men from
14 the face regions or other areas of the mine affected. If
15 ventilation is restored in fifteen minutes, the face
16 regions and other places in the affected areas where gas
17 (methane) is likely to accumulate, shall be reexamined
18 by a certified person; and if found free of explosive gas,
19 power may be restored and work resumed. If ventilation
20 is not restored in fifteen minutes, all underground
21 employees shall be removed from the mine, all power
22 shall be cut off in a timely manner, and the under-
23 ground employees shall not return until ventilation is
24 restored and the mine examined by certified persons,

25 mine examiners, or other persons holding a certificate
26 to make preshift examination.

27 (b) All main fans installed after the effective date of
28 this article shall be located on the surface in fireproof
29 housings offset not less than fifteen feet from the nearest
30 side of the mine opening, equipped with fireproof air
31 ducts, provided with explosion doors or a weak wall, and
32 operated from an independent power circuit. In lieu of
33 the requirements for the location of fans and pressure-
34 relief facilities, a fan may be directly in front of, or over
35 a mine opening: *Provided*, That such opening is not in
36 direct line with possible forces coming out of the mine
37 if an explosion occurs: *Provided, however*, That there is
38 another opening having a weak-wall stopping or
39 explosion doors that would be in direct line with forces
40 coming out of the mine. All main fans shall be provided
41 with pressure-recording gauges or water gauges. A
42 daily inspection shall be made of all main fans and
43 machinery connected therewith by a certified electrician
44 and a record kept of the same in a book prescribed for
45 this purpose or by adequate facilities provided to
46 permanently record the performance of the main fans
47 and to give warning of an interruption to a fan.

48 (c) Auxiliary fans and tubing shall be permitted to be
49 used in lieu of or in conjunction with line brattice to
50 provide adequate ventilation to the working faces:
51 *Provided*, That auxiliary fans be so located and operated
52 to avoid recirculation of air at any time. Auxiliary fans
53 shall be approved and maintained as permissible.

54 (d) If the auxiliary fan is stopped or fails, the
55 electrical equipment in the place shall be stopped and
56 the power disconnected at the power source until
57 ventilation in the working place is restored. During such
58 stoppage, the ventilation shall be by means of the
59 primary air current conducted into the place in a
60 manner to prevent accumulation of methane.

61 (e) In places where auxiliary fans and tubing are
62 used, the ventilation between shifts, weekends and idle
63 shifts shall be provided to face areas with line brattice
64 or the equivalent to prevent accumulation of methane.

65 (f) The director may require that when continuous

66 mine equipment is being used, all face ventilating
67 systems using auxiliary fans and tubing shall be
68 provided with machine-mounted diffuser fans, and such
69 fans shall be continuously operated during mining
70 operations.

71 (g) In the event of a fire or explosion in any coal mine,
72 the ventilating fan or fans shall not intentionally be
73 started, stopped, speed increased or decreased or the
74 direction of the air current changed without the
75 approval of the general mine foreman, and, if he is not
76 immediately available, a representative of the division.
77 A duly authorized representative of the employees
78 should be consulted if practical under the circumstan-
79 ces.

§22A-2-14. Safety inspections; removal of gases.

1 It shall be the duty of the mine foreman, assistant
2 mine foreman or fire boss to examine all working places
3 under his supervision for hazards at least once every two
4 hours during each coal-producing shift, or more often if
5 necessary for safety. In all mines such examinations
6 shall include tests with an approved detector for
7 methane and oxygen deficiency, which tests for oxygen
8 deficiency may be with a permissible flame safety lamp:
9 *Provided*, That a flame safety lamp may be used for
10 methane testing when a malfunction occurs with a
11 methane detector. It shall also be his duty to remove as
12 soon as possible after its discovery any accumulations of
13 explosive or noxious gases in active workings, and where
14 practicable, any accumulations of explosive or noxious
15 gases in the worked out and abandoned portions of the
16 mine. It shall be the duty of the mine foreman, assistant
17 mine foreman or fire boss to examine each mine within
18 three hours prior to the beginning of a shift and before
19 any miner in such shift enters the active workings of the
20 mine.

§22A-2-20. Preparation of danger signal by fire boss or certified person acting as such prior to examination; report; records open for inspection.

1 It shall be the duty of the fire boss, or a certified
2 person acting as such, to prepare a danger signal (a

3 separate signal for each shift) with red color at the mine
4 entrance at the beginning of his shift or prior to his
5 entering the mine to make his examination and, except
6 for those persons already on assigned duty, no person
7 except the mine owner, operator or agent, and only then
8 in the case of necessity, shall pass beyond this danger
9 signal until the mine has been examined by the fire boss
10 or other certified person and the mine or certain parts
11 thereof reported by him to be safe. When reported by
12 him to be safe, the danger sign or color thereof shall be
13 changed to indicate that the mine is safe in order that
14 employees going on shift may begin work. Each person
15 designated to make such fire boss examinations shall be
16 assigned a definite underground area of such mine, and,
17 in making his examination shall examine all active
18 working places in the assigned area and make tests with
19 an approved device for accumulations of methane and
20 oxygen deficiency; examine seals and doors; examine
21 and test the roof, face, and ribs in the working places
22 and on active roadways and travelways, approaches to
23 abandoned workings and accessible falls in active
24 sections. He shall place his initials and the date at or
25 near the face of each place he examines. Should he find
26 a condition which he considers dangerous to persons
27 entering such areas, he shall place a conspicuous danger
28 sign at all entrances to such place or places. Only
29 persons authorized by the mine management may enter
30 such places while the sign is posted and only for the
31 purpose of eliminating the dangerous condition. Upon
32 completing his examination he shall report by suitable
33 communication system or in person the results of this
34 examination to a certified person designated by mine
35 management to receive and record such report, at a
36 designated station on the surface of the premises of the
37 mine or underground, before other persons enter the
38 mine to work in such coal-producing shifts. He shall also
39 record the results of his examination with ink or
40 indelible pencil in a book prescribed by the director,
41 kept for such purpose at a place on the surface of the
42 mine designated by mine management. All records of
43 daily and weekly reports, as prescribed herein, shall be
44 open for inspection by interested persons.

§22A-2-24. Control of coal dust; rock dusting.

1 (a) In all mines, dangerous accumulations of fine, dry
2 coal and coal dust shall be removed from the mine, and
3 all dry and dusty operating sections and haulageways
4 and conveyors and back entries shall be rock dusted or
5 dust allayed by such other methods as may be approved
6 by the director.

7 (b) All mines or locations in mines that are too wet
8 or too high in incombustible content for a coal dust
9 explosion to initiate or propagate are not required to be
10 rock dusted during the time any of these conditions
11 prevail. Coal dust and other dust in suspension in
12 unusual quantities shall be allayed by sprinkling or
13 other dust allaying devices.

14 (c) In all dry and dusty mines or sections thereof, rock
15 dust shall be applied and maintained upon the roof, floor
16 and sides of all operating sections, haulageways and
17 parallel entries connected thereto by open crosscuts.
18 Back entries shall be rock dusted. Rock dust shall be so
19 applied to include the last open crosscut of rooms and
20 entries, and to within forty feet of faces. Rock dust shall
21 be maintained in such quantity that the incombustible
22 content of the mine dust that could initiate or propagate
23 an explosion shall not be less than sixty-five percent, but
24 the incombustible content in return entries shall not be
25 less than eighty percent.

26 (d) Rock dust shall not contain more than five percent
27 by volume of quartz or free silica particles and shall be
28 pulverized so that one hundred percent will pass
29 through a twenty mesh screen and seventy percent or
30 more will pass through a two hundred mesh screen.

§22A-2-26. Roof support; specific requirements.

1 (a) *Generally.* — The method of mining followed in
2 any coal mine shall not expose the miner to unusual
3 dangers from roof falls.

4 (b) *Roadways, intersections and arches.* — The width
5 of roadways shall not exceed sixteen feet unless

6 additional support is added cross sectional. During the
7 development of intersections, the roof between the
8 tangents of the arches in the entry or room shall be
9 supported with artificial roof supports prior to the
10 development of such intersections. All areas where the
11 arch is broken shall be considered as having unsup-
12 ported roof and such roof should have artificial roof
13 supports installed prior to any other work being
14 performed in the area.

15 (c) *Examinations and corrections.* — Where miners
16 are exposed to danger from falls of roof, face and ribs,
17 the operator shall examine and test the roof, face and
18 ribs before any work or machine is started, and as
19 frequently thereafter as may be necessary to ensure
20 safety. When dangerous conditions are found, they shall
21 be corrected immediately. A probe or probes for
22 methane detectors shall be provided on each working
23 section other than longwall sections and sections mined
24 solely with continuous miners with integral roof bolters.

25 (d) *Roof bolt recovery.* — Roof bolts shall not be
26 recovered where complete extraction of pillars is
27 attempted, where adjacent to clay veins or at the
28 locations of other irregularities, whether natural or
29 otherwise, that induce abnormal hazards. Where roof
30 bolt recovery is permitted, it shall be conducted only in
31 accordance with methods prescribed in the approved
32 roof control plan, and shall be conducted by experienced
33 miners and only where adequate temporary support is
34 provided.

**§22A-2-37. Haulage roads and equipment; shelter holes;
prohibited practices; signals; inspection.**

1 (a) The roadbed, rails, joints, switches, frogs and
2 other elements of all haulage roads shall be constructed,
3 installed and maintained in a manner consistent with
4 speed and type of haulage operations being conducted
5 to ensure safe operation. Where transportation of
6 personnel is exclusively by rail, track shall be main-
7 tained to within five hundred feet of the nearest working
8 face, except that when any section is fully developed and

9 being prepared for retreating, then the distance of such
10 maintenance can be extended to eight hundred feet if
11 a rubber tired vehicle is readily available.

12 (b) Track switches, except room and entry develop-
13 ment switches, shall be provided with properly installed
14 throws, bridle bars and guardrails; switch throws and
15 stands, where possible, shall be placed on the clearance
16 side.

17 (c) Haulage roads on entries developed after the
18 effective date of this article shall have a continuous,
19 unobstructed clearance of at least twenty-four inches
20 from the farthest projection of any moving equipment
21 on the clearance side.

22 (d) On haulage roads where trolley lines are used, the
23 clearance shall be on the side opposite the trolley lines.

24 (e) On the trolley wire or "tight" side, after the
25 effective date of this article, there shall be at least
26 twelve inches of clearance from the farthest projection
27 of any moving equipment.

28 (f) Warning lights or reflective signs or tapes shall be
29 installed along haulage roads at locations of abrupt or
30 sudden changes in the overhead clearance.

31 (g) The clearance space on all haulage roads shall be
32 kept free of loose rock, coal, supplies or other material:
33 *Provided*, That not more than twenty-four inches need
34 be kept free of such obstructions.

35 (h) Ample clearance shall be provided at all points
36 where supplies are loaded or unloaded along haulage
37 roads or conveyors, which in no event shall be less than
38 twenty-four inches.

39 (i) Shelter holes shall be provided along haulage
40 entries driven after the effective date of this article
41 where locomotive, rope or animal haulage is used. Such
42 shelter holes shall be spaced not more than one hundred
43 feet apart, except when variances are authorized by the
44 director with unanimous agreement of the mine safety
45 and technical review committee. Shelter holes shall be
46 on the side of the entry opposite the trolley wire except

47 that shelter holes may be on the trolley wire and feeder
48 wire side if the trolley wire and feeder wire are guarded
49 in a manner approved by the director.

50 (j) Shelter holes made after the effective date of this
51 article, unless the director with unanimous agreement
52 of the mine safety and technical review committee
53 grants a waiver, shall be at least five feet in depth, not
54 more than four feet in width, and as high as the
55 traveling space. Room necks and crosscuts may be used
56 as shelter holes even though their width exceeds four
57 feet.

58 (k) Shelter holes shall be kept clear of refuse and
59 other obstructions.

60 (l) After the effective date of this article, shelter holes
61 shall be provided at switch throws and manually
62 operated permanent doors.

63 (m) No steam locomotive shall be used in mines where
64 miners are actually employed in the extraction of coal,
65 but this shall not prevent operation of a steam locomotive
66 through any tunnel haulway or part of a mine that
67 is not in actual operation and producing coal.

68 (n) Underground equipment powered by internal
69 combustion engines using petroleum products, alcohol,
70 or any other compound shall not be used in a coal mine.

71 (o) Locomotives, personnel carriers, mine cars, supply
72 cars, shuttle cars, and all other haulage equipment shall
73 be maintained in a safe operating condition. Each
74 locomotive, personnel carrier, barrier tractor and other
75 related equipment shall be equipped with a suitable
76 lifting jack and handle. An audible warning device and
77 headlights shall be provided on each locomotive and
78 each shuttle car. All other mobile equipment, using the
79 face areas of the mine, purchased after the effective date
80 of this article, shall be provided with a conspicuous light
81 or other approved device so as to reduce the possibility
82 of collision.

83 (p) No persons other than those necessary to operate
84 a trip or car shall ride on any loaded car or on the
85 outside of any car. Where pusher locomotives are not

86 used, the locomotive operator shall have an assistant to
87 assist him in his duties.

88 (q) The pushing of trips, except for switching pur-
89 poses, is prohibited on main haulage roads: *Provided*,
90 That nothing herein shall prohibit the use of a pusher
91 locomotive to assist the locomotive pulling a trip.
92 Motormen and trip riders shall use care in handling
93 locomotives and cars. It shall be their duty to see that
94 there is a conspicuous light on the front and rear of each
95 trip or train of cars when in motion: *Provided, however*,
96 That trip lights need not be used on cars being shifted
97 to and from loading machines, on cars being handled at
98 loading heads during gathering operations at working
99 faces, or on trips being pulled by animals. No person
100 except the operator or his assistant shall ride on
101 locomotives or loaded cars. An empty car or cars shall
102 be used to provide a safe distance between the locom-
103 otive and the material car when rail, pipe or long
104 timbers are being hauled. A safe clearance shall be
105 maintained between the end car or trips placed on side
106 tracks and moving traffic. On haulage roads the
107 clearance point shall be marked with an approved
108 device.

109 (r) No motorman, trip rider or brakeman shall get on
110 or off cars, trips or locomotives while they are in motion,
111 except that a trip rider or brakeman may get on or off
112 the rear end of a slowly moving trip or the stirrup of
113 a slowly moving locomotive to throw a switch, align a
114 derail or open or close a door.

115 (s) Flying or running switches and riding on the front
116 bumper of a car or locomotive are prohibited. Back
117 poling shall be prohibited except with precaution to the
118 nearest turning point (not over eighty feet), or when
119 going up extremely steep grades and then only at slow
120 speed. The operator of a shuttle car shall face in the
121 direction of travel except during the loading operation
122 when he shall face the loading machine.

123 (t) (1) A system of signals, methods or devices shall
124 be used to provide protection for trips, locomotives and
125 other equipment coming out onto tracks used by other
126 equipment.

127 (2) In any coal mine where more than three hundred
128 fifty tons of coal are produced on any shift in each
129 twenty-four hour period, a dispatcher shall be on duty
130 when there are movements of track equipment under-
131 ground, including time when there is no production of
132 coal. Such traffic shall move only at the direction of the
133 dispatcher.

134 (3) The dispatcher's only duty shall be to direct
135 traffic: *Provided*, That the dispatcher's duties may also
136 include those of the responsible person required by
137 section forty-two of this article: *Provided, however*, That
138 the dispatcher may perform other duties which do not
139 interfere with his dispatching responsibilities and do not
140 require him to leave the dispatcher's station except as
141 approved by the mine safety and technical review
142 committee.

143 (4) Any dispatcher's station provided after the effec-
144 tive date of this article shall be on the surface.

145 (5) All self-propelled track equipment shall be
146 equipped with two-way communications.

147 (u) Motormen shall inspect locomotives, and report
148 any mechanical defects found to the proper supervisor
149 before a locomotive is put in operation.

150 (v) A locomotive following another trip shall maintain
151 a distance of at least three hundred feet from the rear
152 end of the trip ahead, unless such locomotive is coupled
153 to the trip ahead.

154 (w) Positive stopblocks or derails shall be installed on
155 all tracks near the top and at landings of shafts, slopes
156 and surface inclines. Positive-acting stopblocks or
157 derails shall be used where necessary to protect persons
158 from danger of runaway haulage equipment.

159 (x) Shuttle cars shall not be altered by the addition
160 of sideboards so as to inhibit the view of the operator.

161 (y) Mining equipment shall not be parked within
162 fifteen feet of a check curtain or fly curtain.

163 (z) All self-propelled track haulage equipment shall
164 be equipped with an emergency stop switch, self

165 centering valves, or other devices designed to de-
166 energize the traction motor circuit in the event of an
167 emergency: *Provided*, That such equipment in operation
168 in a mine on or before the first day of January, one
169 thousand nine hundred eighty-seven, shall not be
170 required to be retrofitted. On or before the first day of
171 January, one thousand nine hundred eighty-seven, all
172 track mounted equipment shall be equipped with trolley
173 pole swing limiters or other means approved by the
174 mine safety and technical review committee to restrict
175 movement of the trolley pole when it is disengaged from
176 the trolley wire. Battery powered mobile equipment
177 shall have the operating controls clearly marked to
178 distinguish the forward and reverse positions.

§22A-2-43. **Electric equipment in mines.**

1 (a) *Methane*. — Electric equipment shall not be taken
2 into or operated in any place where methane can be
3 detected with a flame safety lamp or other approved
4 methane detector at one percent or more at any point
5 not less than twelve inches from the roof, face or rib.

6 (b) *Return air*. — In all mines, electric haulage
7 locomotives operated from trolley wire and other
8 electrical equipment or devices which may ignite gas
9 shall not be used in return air, unless permission is
10 granted by the director for a specified area. For the
11 purpose of this provision, air used to ventilate a section
12 of a mine shall not be considered return air until such
13 time as the air has ventilated all of the workings in the
14 section.

15 (c) *Qualified person to operate cutting machine*. — No
16 person shall be placed in charge of a coal-cutting
17 machine in any mine who is not a qualified person,
18 capable of determining the safety of the roof and sides
19 of the working places and of detecting the presence of
20 explosive gas, unless they are accompanied by a
21 certified or qualified person who has passed such an
22 examination.

23 (d) *Inspections*. — In any mine no machine shall be
24 brought in by the last breakthrough next to the working
25 face until the machine man shall have made an

26 inspection for gas in the place where the machine is to
27 work. If explosive gas in excess of one percent is found
28 in the place, the machine shall not be taken in until the
29 danger is removed.

30 (e) *Indication of gas.* — In working places a suitable
31 approved apparatus for the detection of explosive gas,
32 shall be provided for use with each mining machine
33 when working, and should any indication of explosive
34 gas in excess of one percent appear on any apparatus
35 used for the detection of explosive gas, the person in
36 charge shall immediately stop the machine, cut off the
37 current at the nearest switch and report the condition
38 to the mine foreman or supervisor. The machine shall
39 not again be started in such place until the condition
40 found has been corrected and been pronounced safe by
41 a certified person.

42 (f) *Periodic gas examinations.* — No electric equip-
43 ment shall be operated in a mine for a longer period
44 than twenty minutes without an examination as above
45 described being made for gas; and if gas is found in
46 excess of one percent, the current shall at once be
47 switched off the machine, and the trailing cable shall
48 forthwith be disconnected from the power supply until
49 the place is pronounced safe.

50 (g) *Operation of mining machines.* — Machine runners
51 and helpers shall use care while operating mining
52 machines. They shall examine the roof of the working
53 place to see that it is safe before starting to operate the
54 machine. They shall not move the machine while the
55 cutter chain is in motion.

§22A-2-46. Welding and cutting.

1 (a) A record shall be kept of oxygen and gas tanks or
2 cylinders taken into a mine and the date shall be
3 recorded when they are removed from the mine. No
4 more tanks or cylinders than necessary to perform the
5 work efficiently shall be permitted underground at one
6 time.

7 (b) Propane torches may be used in lieu of blow-
8 torches. Only approved apparatus such as torches,

9 regulators, pressure reducing valves, hoses, check valves
10 and gas cylinders shall be used.

11 (c) Welding and cutting may be done in mines:
12 *Provided*, That all equipment and gauges are main-
13 tained in safe condition and not abused, that suitable
14 precautions are taken against ignition of methane, coal
15 dust, or combustible materials, that means are provided
16 for prompt extinguishment of fires accidentally started,
17 and that only persons who have demonstrated compet-
18 ency in welding and cutting are entrusted to do this
19 work. Adequate eye protection shall be used by all
20 persons doing welding or cutting, and precautions shall
21 be taken to prevent other persons from exposure that
22 might be harmful to their eyes. A suitable wrench
23 designed for compressed tanks shall be provided to the
24 person authorized to use the equipment.

25 (d) Transportation of oxygen and gas tanks or cylind-
26 ers shall be permitted on self-propelled machinery or
27 belt conveyors specially equipped for safe holding of the
28 containers in transportation. In no instance shall such
29 transportation be permitted in conjunction with any
30 mantrip, unless such mantrip is especially equipped
31 with a compartment, lined with at least four inches of
32 foam rubber or the equivalent, and capable of tightly
33 securing the tank inside the manufactured frame of the
34 vehicle.

35 (e) Empty oxygen and gas tanks or cylinders shall be
36 marked "empty" and shall be removed from the mine
37 promptly in safe containers provided for transportation
38 of the same.

39 (f) When tanks and cylinders are not in use and when
40 they are being transported, valve protection caps and
41 plugs shall be placed on all tanks or cylinders for which
42 caps and plugs are available. No oxygen tanks, gas
43 tanks or cylinders shall be transported with the hoses
44 and gauges attached thereto.

45 (g) In all mines a certified person, pursuant to section
46 twelve of this article, shall examine for gas with
47 permissible flame safety lamps or other approved
48 detectors before and during welding or cutting. The

49 safety of the equipment and methods used in such cases
50 shall be subject to approval of the director. If equipment
51 is mobile, it shall be removed outby the last open
52 breakthrough before cutting and welding may be
53 performed on such equipment.

§22A-2-55. Protective equipment and clothing.

1 (a) Welders and helpers shall use proper shields or
2 goggles to protect their eyes. All employees shall have
3 approved goggles or shields and use the same where
4 there is a hazard from flying particles, or other eye
5 hazards.

6 (b) Employees engaged in haulage operations and all
7 other persons employed around moving equipment on
8 the surface and underground shall wear snug-fitting
9 clothing.

10 (c) Protective gloves shall be worn when material
11 which may injure hands is handled, but gloves with
12 gauntleted cuffs shall not be worn around moving
13 equipment.

14 (d) Safety hats and safety-toed shoes shall be worn by
15 all persons while in or around a mine.

16 (e) Approved eye protection shall be worn by all
17 persons while being transported in open-type man trips.

18 (f) A self-rescue device approved by the director shall
19 be worn by each person underground or kept within his
20 immediate reach, and such device shall be provided by
21 the operator. The self-rescue device shall be adequate to
22 protect such miner for one hour or longer. Each
23 operator shall train each miner in the use of such device,
24 and refresher training courses for all underground
25 employees shall be held during each calendar year.

§22A-2-56. Checking systems.

1 Each mine shall have a check-in and check-out system
2 which will provide positive identification of every person
3 underground and will provide an accurate record of the
4 persons in the mine kept on the surface in a place that
5 will not be affected in the event of an explosion. Said
6 record shall bear a number or name identical to the

7 identification check that is securely fastened to the lamp
8 belt of all persons underground. The identification check
9 shall be made of a rust-resistant metal of no less than
10 sixteen guage.

§22A-2-58. Fire protection.

1 (a) Suitable fire protection shall be provided at
2 surface installations of fans, shops, tipples, and prepa-
3 ration plants, substations, hoist rooms and compressor
4 stations.

5 (b) Fire drills and demonstration of various types of
6 available fire-fighting equipment shall be held for
7 employees at least every six months.

8 (c) The location of pipelines, location of valves, and
9 fire taps shall be shown on a map of the mine and kept
10 available at the mine office at all times.

11 (d) Each coal mine shall be provided with suitable
12 fire-fighting equipment adapted for the size and
13 condition of the mine. Fire-fighting equipment required
14 under this article shall meet the following requirements:

15 (1) Waterlines shall be capable of delivering fifty
16 gallons of water at a nozzle pressure of fifty pounds per
17 square inch.

18 (2) A portable water car shall be of at least one
19 thousand gallons capacity, and shall have at least three
20 hundred feet of fire hose with nozzles. A portable water
21 car shall be capable of providing a flow through the hose
22 of fifty gallons of water per minute at a nozzle pressure
23 of fifty pounds per square inch.

24 (3) A portable chemical car shall carry enough
25 chemicals to provide a fire extinguishing capacity
26 equivalent to that of a portable water car.

27 (4) A portable foam-generating machine shall have
28 facilities and equipment for supplying the machine with
29 thirty gallons of water per minute at thirty pounds per
30 square inch for a period of thirty-five minutes.

31 (5) A portable fire extinguisher shall be either a
32 multipurpose dry chemical type, containing a nominal

33 weight of five pounds of dry powder and enough
34 expellant to apply the powder; or a foam-producing type
35 containing at least two and one-half gallons of foam-
36 producing liquid and enough expellant to supply the
37 foam. Only fire extinguishers approved by the
38 Underwriters Laboratories, Inc. or Factor Mutual
39 Laboratories, carrying appropriate labels as to type and
40 purpose shall be used after the first day of July, one
41 thousand nine hundred seventy-one, and all new porta-
42 ble fire extinguishers acquired for use in a coal mine
43 shall be of the multipurpose dry chemical type, having
44 a 2A 10BC or higher rating.

45 (6) The fire hose shall be rubber-lined, mildew-proof
46 and the cover shall be of flame-resistant qualities,
47 meeting requirements for hose in Bureau of Mines
48 Schedule 2G, except that the test flame shall be applied
49 to the outer surface rather than to an open end. The
50 bursting pressure shall be at least four times higher
51 than the static water at the mine location; the maximum
52 water pressure in the hose nozzle shall not exceed 100
53 p.s.i.g.

54 (e) Each working section of coal mines producing
55 three hundred tons or more per shift shall be provided
56 with two portable fire extinguishers and two hundred
57 forty pounds of bagged rock dust or equivalent; water-
58 lines shall extend to each section loading point and be
59 equipped with enough fire hose to reach each working
60 face unless the section loading point is provided with one
61 of the following: (1) Two portable water cars or (2) two
62 portable chemical cars, or (3) one portable water car or
63 one portable chemical car and either a portable foam-
64 generating machine or a portable high-pressure rock-
65 dusting machine, fitted with at least two hundred fifty
66 feet of hose and supplied with at least sixty sacks of rock
67 dust.

68 (f) In all coal mines, waterlines shall be installed
69 parallel to the entire length of belt conveyors and shall
70 be equipped with fire hose outlets with valves at three-
71 hundred-foot intervals along each belt conveyor and at
72 tailpieces. At least five hundred feet of fire hose with
73 fittings suitable for connection with each belt conveyor

74 waterline system shall be stored at strategic locations
75 along the belt conveyor. Waterlines may be installed in
76 entries adjacent to the conveyor entry belt as long as the
77 outlets project into the belt conveyor entry. Each
78 working section of coal mines producing less than three
79 hundred tons of coal per shift shall be provided with two
80 portable fire extinguishers, two hundred forty pounds of
81 bagged rock dust and at least five hundred gallons of
82 water and at least three pails of ten-quart capacity. In
83 lieu of the five hundred gallon water supply, a waterline
84 with sufficient hose to reach the working places, a
85 portable water car of five hundred fifty gallons capacity,
86 or a portable all-purpose dry powder chemical car of at
87 least one hundred twenty-five pounds capacity may be
88 provided.

89 (g) In mines producing three hundred tons of coal or
90 more per shift, waterlines shall be installed parallel to
91 all haulage tracks using mechanized equipment in the
92 track or adjacent entry and shall extend to the loading
93 point of each working section. Waterlines shall be
94 equipped with outlet valves at intervals of not more than
95 five hundred feet, and five hundred feet of fire hose with
96 fittings suitable for connection with such waterlines
97 shall be provided at strategic locations. Two portable
98 water cars, readily available, may be used in lieu of
99 waterlines prescribed under this subsection.

100 (h) In mines producing less than three hundred tons
101 of coal per shift, there shall be provided at five-hundred-
102 foot intervals in all main and secondary haulage roads:
103 (1) A tank of water of at least fifty-five gallon capacity
104 with at least three pails of not less than ten-quart
105 capacity, or (2) not less than two hundred forty pounds
106 of bagged rock dust.

107 (i) Each track or off-track locomotive, self-propelled
108 man-trip car, or personnel carrier shall be equipped
109 with one portable fire extinguisher.

110 (j) Two portable fire extinguishers shall be provided
111 at each permanent electrical installation. One portable
112 fire extinguisher and two hundred forty pounds of rock

113 dust or equivalent shall be provided at each temporary
114 electrical installation.

115 (k) Two portable fire extinguishers and two hundred
116 forty pounds of rock dust or equivalent shall be provided
117 at each permanent underground oil storage station. One
118 portable fire extinguisher shall be provided at each
119 working section where twenty-five gallons or more of oil
120 are stored in addition to extinguishers required under
121 subsection (e) of this section.

122 (l) One portable fire extinguisher or two hundred
123 forty pounds of rock dust or equivalent and water shall
124 be provided at locations where welding, cutting, or
125 soldering with arc or flame is being done.

126 (m) At each wooden door through which power lines
127 pass there shall be one portable fire extinguisher or two
128 hundred forty pounds of rock dust or equivalent within
129 twenty-five feet of the door on the intake air side.

130 (n) At each mine producing three hundred tons of coal
131 or more per shift, there shall be readily available the
132 following materials at locations not exceeding two miles
133 from each working section:

134 (1) One thousand board feet of brattice boards

135 (2) Two rolls of brattice cloth

136 (3) Two handsaws

137 (4) Twenty-five pounds of 8 dwt nails

138 (5) Twenty-five pounds of 10 dwt nails

139 (6) Twenty-five pounds of 16 dwt nails

140 (7) Three claw hammers

141 (8) Twenty-five bags of wood fiber plaster or ten bags
142 of cement (or equivalent material for stoppings)

143 (9) Five tons of rock dust.

144 (o) At each mine producing less than three hundred
145 tons of coal per shift, the above materials shall be
146 available at the mine: *Provided, however,* That the
147 emergency materials for one or more mines may be
148 stored at a central warehouse or building supply

149 company and such supply must be the equivalent of that
150 required for all mines involved and within one hour's
151 delivery time from each mine. This exception shall not
152 apply where the active working sections are more than
153 two miles from the surface.

**§22A-2-63. No mine to be opened or reopened without
prior approval of commissioner of the
department of energy; approval fee; exten-
sion of certificate of approval; certificates
not transferable; section to be printed on
certificates.**

1 (a) *Permit request.* — After the first day of July, one
2 thousand nine hundred seventy-one, no mine shall be
3 opened or reopened unless prior approval has been
4 obtained from the commissioner of the department of
5 energy, which approval shall not be unreasonably
6 withheld. The operator shall pay for such approval a fee
7 of ten dollars, which payment shall be tendered with the
8 operator's application for such approval: *Provided*, That
9 mines producing coal solely for the operator's use shall
10 be issued a permit without charge if coal production will
11 be less than fifty tons a year.

12 (b) *Extension of permit.* — Within thirty days after
13 the first day of January of each year, the operator of
14 each mine holding a certificate evidencing approval of
15 the commissioner to open a mine shall apply for the
16 extension of such certificate of approval for an addi-
17 tional year, excepting those approved by the director to
18 go on inactive status. Such approval, evidenced by a
19 certificate of the commissioner, shall be granted as a
20 matter of right and without charge if, at the time such
21 application is made, the operator is in compliance with
22 the provisions of section seventy-seven of this article and
23 has paid or otherwise appealed all coal mine assess-
24 ments imposed under article one-a, chapter twenty-two-
25 a of this code. Applications for extension of such
26 certificates of approval not submitted within the time
27 required shall be processed as an application to open or
28 reopen a mine and shall be accompanied by a fee of ten
29 dollars.

30 (c) *Not transferable.* — Certificates of approval issued
31 pursuant to this section shall not be transferable.

32 (d) *Status of certificate.* — The provisions of this
33 section shall be printed on the reverse side of every
34 certificate issued hereunder.

35 (e) *Preinspection.* — The district mine inspector shall
36 be contacted for a preinspection of the area proposed for
37 underground mining prior to the issuance of any new
38 opening approval.

§22A-2-71a. Right of miner to refuse to work in an unsafe area or unsafe manner.

1 Any miner has the right to refuse to work in an area
2 or under conditions which he believes to be unsafe.

§22A-2-77. Monthly report by operator of mine; exception as to certain inactive mines.

1 On or before the end of each calendar month, the
2 operator of each coal mine shall file with the director
3 a report with respect thereto covering the next preced-
4 ing calendar month which shall reflect the number of
5 accidents which have occurred at each such mine, the
6 number of persons employed, the days worked and the
7 actual tonnage mined. Such report shall be made upon
8 forms furnished by the director. Other provisions of this
9 section to the contrary notwithstanding, no such report
10 shall be required with respect to any mine on approved
11 inactive status if no employees were present at such
12 mine at any time during the next preceding calendar
13 month.

CHAPTER 64. LEGISLATIVES RULES.

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

***§64-2-22(9)(6). Commissioner of the department of energy.**

1 (a) The legislative rules filed in the state register on
2 the fourteenth day of November, one thousand nine
3 hundred eighty-six, modified by the commissioner of the
4 department of energy to meet the objections of the

*Clerk's Note: This section was also amended by S. B. 748, which passed prior to this act, and S. B. 761, which passed subsequent to it.

5 legislative rule-making review committee and refiled in
6 the state register on the sixteenth day of December, one
7 thousand nine hundred eighty-six, relating to the
8 commissioner of the department of energy (standards
9 for certification of coal mine electricians) are
10 authorized.

11 (b) The legislative rules filed in the state register on
12 the fifteenth day of December, one thousand nine
13 hundred eighty-six, modified by the commissioner of the
14 department of energy to meet the objections of the
15 legislative rule-making review committee and refiled in
16 the state register on the twenty-first day of January, one
17 thousand nine hundred eighty-seven, relating to the
18 commissioner of the department of energy (safety
19 training program for prospective underground coal
20 miners in West Virginia) are authorized.

21 (c) The legislative rules filed in the state register on
22 the fifteenth day of December, one thousand nine
23 hundred eighty-six, modified by the commissioner of the
24 department of energy to meet the objections of the
25 legislative rule-making review committee and refiled in
26 the state register on the twenty-first day of January, one
27 thousand nine hundred eighty-seven, relating to the
28 commissioner of the department of energy (safety
29 training program for prospective surface coal miners in
30 West Virginia) are authorized.

31 (d) The legislative rules filed in the state register on
32 the third day of April, one thousand nine hundred
33 eighty-seven, relating to the department of energy
34 (standards for certification of underground belt examiners
35 for underground coal mines) are authorized.

CHAPTER 83

(H. B. 2264—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

[Passed March 10, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article three,
chapter seventeen-a of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to the display of registration plates on motor vehicles and display of plates on truck tractors and road tractors designed to pull trailers and semi-trailers.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;
ISSUANCE OF CERTIFICATES OF TITLE.**

§17A-3-15. Display of registration plates.

1 Registration plates issued for vehicles required to be
2 registered hereunder shall be attached to the rear
3 thereof except that on truck tractors and road tractors
4 designed and constructed to pull trailers or semi-
5 trailers, the registration plate shall be mounted to the
6 front.

7 Every registration plate shall at all times be securely
8 fastened in a horizontal position to the vehicle for which
9 it is issued so as to prevent the plate from swinging and
10 at a height of not less than twelve inches from the
11 ground, measuring from the bottom of such plate, in a
12 place and position to be clearly visible and shall be
13 maintained free from foreign materials and in a
14 condition to be clearly legible.

CHAPTER 84

(H. B. 2075—By Delegates Givens and Otte)

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

AN ACT to amend and reenact section five, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing legal heirs and legatees to have the license plates and registrations of deceased persons transferred to them without cost and to use the plates until they regularly expire.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-5. Transfer by operation of law.

1 Whenever the title or interest of an owner in or to a
2 registered vehicle shall pass to another otherwise than
3 by voluntary transfer, the registration thereof shall
4 expire and the vehicle shall not be operated upon the
5 highways unless and until the person entitled to
6 possession of such vehicle shall apply for and obtain the
7 registration thereof, except that such vehicle may be
8 operated by the person entitled to its possession or his
9 legal representative upon the highways for a distance
10 not exceeding seventy-five miles upon displaying upon
11 such vehicle the registration plates issued to the former
12 owner, or in the event title has become vested in the
13 person holding a lien or encumbrance upon said vehicle,
14 such person may apply to the department for and obtain
15 special plates as may be issued under this chapter to
16 dealers or others and may operate any said repossessed
17 vehicle under such special plates only for purposes of
18 transporting the same to a garage or warehouse or for
19 purposes of demonstrating or selling the same: *Provided,*
20 That the commissioner is authorized to transfer the
21 plates and registration of a deceased person to his legal
22 heir or legatee without payment of any fee and the legal
23 heir or legatee may keep and use the same license plate
24 until it regularly expires.

25 Upon any transfer the new owner may secure a new
26 registration and certificate of title upon proper applica-
27 tion and upon presentation of the last certificate of title
28 if available, and such instruments or documents of title
29 authority or certified copies thereof as may be sufficient
30 or required by law to evidence or effect a transfer of
31 title or interest in or to chattels in such case. In the event
32 title has become vested in the person or financial
33 institution holding a lien or encumbrance upon said
34 vehicle, such person or institution need not obtain a new

35 registration of said vehicle or forward the certificate of
36 title to the department in order to sell the vehicle, but
37 the person or institution upon transfer of title or interest
38 to another shall execute and acknowledge an assignment
39 and warranty of title upon the certificate of title and
40 deliver the same not later than thirty days from the date
41 of sale to the purchaser. The person or institution
42 holding a lien or encumbrance upon the vehicle who
43 acquires the vehicle as a result of the lien or encum-
44 brance and subsequently, within sixty days, sells the
45 vehicle in satisfaction of the debt creating the lien or
46 encumbrance, shall not be subject to any privilege tax
47 or personal property tax on the vehicle imposed by any
48 other section.

CHAPTER 85

(S. B. 735—Originating in the Senate Committee on Government Organization)

[Passed March 13, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT to amend and reenact sections ten and ten-a, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to initial application fees for issuance of a dealer license certificate or a manufacturer or transporter license certificate; renewal fees for such certificates; and increasing the amounts of insurance required of manufacturers and transporters.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC.

PART III. FEES AND DEALER SPECIAL PLATES GENERALLY.

§17A-6-10. Fee required for license certificate; dealer special plates.

§17A-6-10a. Special plates for manufacturers and transporters; fee.

§17A-6-10. Fee required for license certificate; dealer special plates.

1 (a) The initial application fee for a license certificate
2 to engage in the business of a new motor vehicle dealer,
3 used motor vehicle dealer, house trailer dealer, trailer
4 dealer, motorcycle dealer, or used parts dealer, or
5 wrecker, or dismantler, shall be two hundred and fifty
6 dollars: *Provided*, That if an application for a license
7 certificate is denied or refused in accordance with
8 section six of this article, one hundred twenty-five
9 dollars shall be refunded to the applicant. The initial
10 application fee shall entitle the licensee to dealer special
11 plates as prescribed by subsections (b),(c),(d) and (e) of
12 this section.

13 (b) The annual renewal fee required for a license
14 certificate to engage in the business of new motor
15 vehicle dealer shall be one hundred dollars. This fee
16 shall also entitle such licensee to one dealer's special
17 plate which shall be known as a Class D special plate.
18 Up to nine additional Class D special plates shall be
19 issued to any such licensee upon application therefor on
20 a form prescribed by the commissioner for such purpose
21 and the payment of a fee of five dollars for each
22 additional Class D special plate. Any such licensee who
23 obtains a total of ten Class D special plates as aforesaid
24 shall be entitled to receive additional Class D special
25 plates on a formula basis, that is, one additional Class
26 D special plate per twenty new motor vehicles sold at
27 retail in this state by such licensee or his predecessor
28 during the preceding fiscal year, upon application
29 therefor on a form prescribed by the commissioner for
30 such purpose and the payment of a fee of five dollars
31 for each such additional Class D special plate: *Provided*,
32 That in the case of a licensee who did not own or operate
33 such business during such preceding fiscal year and who
34 has no predecessor who owned or operated such business
35 during the preceding fiscal year, additional Class D
36 special plates shall be issued, for the ensuing fiscal year
37 only, on a formula basis of one additional Class D special
38 plate per twenty new motor vehicles which such licensee
39 estimates on his application for his license certificate he

40 will sell at retail in this state during said ensuing fiscal
41 year. Any such licensee may obtain Class D special
42 plates in addition to the ten plates authorized above and
43 any authorized on a formula basis, but the cost of each
44 such Class D special plate shall be thirty dollars.

45 (c) The annual renewal fee required for a license
46 certificate to engage in the business of used motor
47 vehicle dealer shall be one hundred dollars. This fee
48 shall also entitle such licensee to one dealer's special
49 plate which shall be known as a Class D-U/C special
50 plate. Up to four additional Class D-U/C special plates
51 shall be issued to any such licensee upon application
52 therefor on a form prescribed by the commissioner for
53 such purpose and the payment of a fee of five dollars
54 for each additional Class D-U/C special plate. Any such
55 licensee who obtains a total of five Class D-U/C special
56 plates as aforesaid shall be entitled to receive additional
57 Class D-U/C special plates on a formula basis, that is,
58 one additional Class D-U/C special plate per thirty used
59 motor vehicles sold at retail in this state by such licensee
60 or his predecessor during the preceding fiscal year,
61 upon application therefor on a form prescribed by the
62 commissioner for such purpose and the payment of a fee
63 of five dollars for each such additional Class D-U/C
64 special plate: *Provided*, That in the case of a licensee
65 who did not own or operate such business during such
66 preceding fiscal year and who has no predecessor who
67 owned or operated such business during the preceding
68 fiscal year, additional Class D-U/C special plates shall
69 be issued, for the ensuing fiscal year only, on a for-
70 mula basis of one additional Class D-U/C special plate
71 per thirty used motor vehicles which such licensee
72 estimates on his application for his license certificate he
73 will sell at retail in this state during said ensuing fiscal
74 year. Any such licensee may obtain Class D-U/C spe-
75 cial plates in addition to the five plates authorized above
76 and any authorized on a formula basis, but the cost
77 of each such Class D-U/C special plate shall be thirty
78 dollars.

79 (d) The annual renewal fee required for a license
80 certificate to engage in the business of house trailer

81 dealer or trailer dealer, as the case may be, shall be
82 twenty-five dollars. This fee shall also entitle such
83 licensee to four dealer's special plates which shall be
84 known as Class D-T/R special plates. Additional Class
85 D-T/R special plates shall be issued to any such licensee
86 upon application therefor on a form prescribed by the
87 commissioner for such purpose and the payment of a fee
88 of five dollars for each such additional Class D-T/R
89 special plate.

90 (e) The annual renewal fee required for a license
91 certificate to engage in the business of motorcycle dealer
92 shall be ten dollars. This fee shall also entitle such
93 licensee to two dealer's special plates which shall be
94 known as Class F special plates. Additional Class F
95 special plates shall be issued to any such dealer upon
96 application therefor on a form prescribed by the
97 commissioner for such purpose and the payment of a fee
98 of five dollars for each such additional Class F special
99 plate.

100 (f) The annual renewal fee required for a license
101 certificate to engage in the business of used parts dealer,
102 or wrecker, or dismantler, as the case may be, shall be
103 fifteen dollars. Upon payment of the fee for said license
104 certificate, a licensee shall be entitled to up to four
105 special license plates which shall be known as Class WD
106 special plates. Such plates shall be issued to any such
107 licensee upon application therefor on a form prescribed
108 by the commissioner for such purpose and the payment
109 of a fee of twenty-five dollars for each such plate. Such
110 plate issued under the provisions of this subsection shall
111 have the words "Towing Only" affixed thereon.

112 (g) All of the special plates provided for in this section
113 shall be of such form and design and contain such other
114 distinguishing marks or characteristics as the commis-
115 sioner may prescribe.

**§17A-6-10a. Special plates for manufacturers and trans-
porters; fee.**

1 (1) The initial application fee for a license certificate
2 to engage in the business of a manufacturer or trans-
3 porter shall be two hundred and fifty dollars: *Provided,*

4 That if an application for a license certificate is denied
5 or refused in accordance with section six of this article,
6 one hundred twenty-five dollars shall be refunded to the
7 applicant. The initial application shall entitle the
8 licensee to manufacturer or transporter plates as
9 prescribed in subsection five of this section.

10 (2) Notwithstanding any of the other provisions of this
11 article, a manufacturer or transporter may operate or
12 move a vehicle upon the highways of this state solely for
13 purposes of transporting and/or testing the same
14 without first registering each such vehicle upon condi-
15 tion that any such vehicle display thereon, in a manner
16 prescribed by the commissioner, a special plate or plates
17 issued to such manufacturer or transporter as provided
18 in this section.

19 (3) Any manufacturer or transporter may make
20 application to the commissioner upon a form prescribed
21 by him for a certificate containing a general distinguish-
22 ing number and for a special plate or plates. The
23 applicant shall also submit proof of his status as a bona
24 fide manufacturer or transporter as may be required by
25 the commissioner.

26 (4) The commissioner, upon approving any such
27 application, shall issue to the applicant a certificate
28 containing the applicant's name and address and the
29 general distinguishing number assigned to the appli-
30 cant. The commissioner shall also issue a special plate,
31 or special plates, as applied for, which shall have
32 displayed thereon the general distinguishing number
33 assigned to the applicant. Each plate shall also contain
34 a number or symbol identifying the same from every
35 other plate or plates bearing the same general distin-
36 guishing number.

37 (5) The annual renewal fee for a license certificate for
38 a manufacturer or transporter and one special plate
39 shall be one hundred dollars. Additional special plates
40 shall be twenty-five dollars each.

41 (6) Every manufacturer or transporter shall keep a
42 written record of the vehicle upon which such special
43 plates are used, the time during which each is used on

44 a particular vehicle, and the location to which the
45 vehicle was delivered, which record shall be open to
46 inspection by any police officer or employee of the
47 department.

48 (7) The provisions of this section shall not apply to
49 work or service vehicles owned by a manufacturer or
50 transporter.

51 (8) Said manufacturer or transporter shall be re-
52 quired to furnish a certificate of insurance in amounts
53 which shall be no less than the requirements of section
54 two, article four, chapter seventeen-d of this code.

CHAPTER 86

(S. B. 541—By Senators Holmes and Manchin)

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

AN ACT to amend and reenact section fifteen, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of motor vehicles; to temporary registration plates issued by dealers; and increasing from three calendar days to five working days the time period after issuance in which dealers must submit notification of issuance to the department.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC.

§17A-6-15. Temporary registration plates or markers.

1 (a) In order to permit a vehicle which is sold to a
2 purchaser by a dealer to be operated on the streets and
3 highways pending receipt of the annual registration
4 plate from the department for such vehicle, the commis-

5 sioner may, subject to the limitations and conditions
6 hereinafter set forth, deliver temporary vehicle registra-
7 tion plates or markers to dealers who in turn may,
8 subject to the limitations and conditions hereinafter set
9 forth, issue the same to purchasers of vehicles, but such
10 purchasers must comply with the pertinent provisions
11 of this section.

12 (b) Application by a dealer to the commissioner for
13 such temporary registration plates or markers shall be
14 made on the form prescribed and furnished by the
15 commissioner for such purpose and shall be accompan-
16 ied by a fee of three dollars for each such temporary
17 registration plate or marker. No refund or credit of fees
18 paid by dealers to the commissioner for temporary
19 registration plates or markers shall be allowed, except
20 that in the event the commissioner discontinues the
21 issuance of such temporary plates or markers, dealers
22 returning temporary registration plates or markers to
23 the commissioner may petition for and be entitled to a
24 refund or a credit thereof. No temporary registration
25 plates or markers shall be delivered by the commis-
26 sioner to any dealer in house trailers only, and no such
27 temporary plates or markers shall be issued for or used
28 on any house trailer for any purpose.

29 (c) Every dealer who has made application for and
30 received temporary registration plates or markers shall
31 maintain in permanent form a record of all temporary
32 registration plates or markers delivered to him, a record
33 of all temporary registration plates or markers issued
34 by him, and a record of any other information pertain-
35 ing to the receipt or the issuance of temporary registra-
36 tion plates or markers which the commissioner may
37 require. Each such record shall be kept for a period of
38 at least three years from the date of the making thereof.
39 Every dealer who issues a temporary registration plate
40 or marker shall, within five working days after he issues
41 such plate or marker, send to the department a copy of
42 the temporary registration plate or marker certificate
43 properly executed by such dealer and the purchaser. No
44 temporary registration plates or markers may be
45 delivered to any dealer until such dealer has fully

46 accounted to the commissioner for the temporary
47 registration plates or markers last delivered to such
48 dealer, by showing the number issued to purchasers by
49 such dealer and any on hand.

50 (d) A dealer shall not issue, assign, transfer or deliver
51 a temporary registration plate or marker to anyone
52 other than the bona fide purchaser of the vehicle to be
53 registered; nor shall a dealer issue a temporary
54 registration plate or marker to anyone possessed of an
55 annual registration plate for a vehicle which has been
56 sold or exchanged, except a dealer may issue a tempor-
57 ary registration plate or marker to the bona fide
58 purchaser of a vehicle to be registered who possesses an
59 annual registration plate of a different class and makes
60 application to the department to exchange such annual
61 registration plate of a different class in accordance with
62 the provisions of section one, article four of this chapter;
63 nor shall a dealer lend to anyone, or use on any vehicle
64 which he may own, a temporary registration plate or
65 marker. It shall be unlawful for any dealer to issue any
66 temporary registration plate or marker knowingly
67 containing any misstatement of fact, or knowingly to
68 insert any false information upon the face thereof.

69 (e) Every dealer who issues temporary registration
70 plates or markers shall affix or insert clearly and
71 indelibly on the face of each temporary registration
72 plate or marker the date of issuance and expiration
73 thereof, and the make and motor or serial number of the
74 vehicle for which issued.

75 (f) If the commissioner finds that the provisions of this
76 section or his directions are not being complied with by
77 a dealer, he may suspend the right of such dealer to
78 issue temporary registration plates or markers.

79 (g) Every person who is issued a temporary registra-
80 tion plate or marker shall execute and send an appli-
81 cation for an annual registration plate to the depart-
82 ment, previous to or not later than fifteen days from the
83 day on which the temporary registration plate or
84 marker is issued to such purchaser.

85 (h) Every person to whom a temporary registration

86 plate or marker has been issued shall permanently
87 destroy such temporary registration plate or marker
88 immediately upon receiving the annual registration
89 plate for such vehicle from the department: *Provided,*
90 That if the annual registration plate is not received
91 within forty days of the issuance of the temporary
92 registration plate or marker, the owner shall, notwith-
93 standing the fact that the annual registration plate has
94 not been received, immediately and permanently
95 destroy the temporary registration plate or marker:
96 *Provided, however,* That not more than one temporary
97 registration plate or marker shall be issued to the same
98 bona fide purchaser for the same vehicle.

99 (i) A temporary registration plate or marker shall
100 expire and become void upon the receipt of the annual
101 registration plate from the department or upon the
102 rescission of the contract to purchase the vehicle in
103 question, or upon the expiration of forty days from the
104 date of issuance, depending upon whichever event shall
105 first occur.

CHAPTER 87

(Com. Sub. for S. B. 466—Originating in the Senate Committee on Transportation)

[Passed March 17, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and six, article sixteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the mandatory inspection of motor vehicles; the powers and duties of the superintendent of the department of public safety with respect thereto; the designation of and the issuance of permits to official inspection stations; the issuance of stickers or decals as official certificates of inspection and approval; the charge to be made by the department for each such sticker or decal; the disposition of the funds derived therefrom, the purposes for which such funds may be expended and the transfer of any

remaining funds to the state road fund; increasing the maximum allowable fee to be charged for inspection of such motor vehicles by official inspection stations; and requiring that necessary headlight adjustments be included within such charge.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. INSPECTION OF VEHICLES.

§17C-16-5. Permit for official inspection stations; fees for and certificate of inspection.

§17C-16-6. Assignment, transfer and posting of official inspection station permit; issuance and record of certificate of inspection; inspection fee.

§17C-16-5. Permit for official inspection stations; fees for and certificate of inspection.

1 The superintendent of the department of public safety
2 shall be responsible for the inspection as provided in this
3 article and shall prescribe requirements and qualifica-
4 tions for official inspection stations. He shall select and
5 designate such stations and shall issue permits therefor
6 and furnish instructions and all necessary forms thereto
7 for the inspection of vehicles as herein required and the
8 issuance of official certificates of inspection and
9 approval. The certificate of inspection shall be a paper
10 sticker or decal to be affixed to the windshield of a
11 motor vehicle, shall be serially numbered and shall
12 properly identify the official inspection station by which
13 issued. A charge of one dollar per sticker shall be
14 charged by the department of public safety to the
15 inspection station, and the funds so received shall be
16 deposited into the state treasury and credited to the
17 account of the department of public safety for applica-
18 tion in the administration and enforcement of the
19 provisions of this article. Any balance remaining in the
20 fund on the last day of June of each fiscal year, not
21 required for operating expenses, construction, repairs or
22 alterations of police barracks for the ensuing fiscal year

23 and for the administration and enforcement of the
24 provisions of this article, shall be transferred to the state
25 road fund. The superintendent is authorized to exchange
26 stickers or to make refunds to official inspection stations
27 for stickers on hand when permits are revoked or when,
28 for any reason, the stickers become obsolete.

29 Application for permit shall be made upon an official
30 form prescribed by the superintendent and permits
31 shall be granted only when the superintendent is
32 satisfied that the station is properly equipped, and has
33 competent personnel to make such inspections and
34 adjustments and that the inspections and adjustments
35 will be properly conducted. The superintendent, before
36 issuing a permit, may require the applicant to file a
37 bond with surety approved by the superintendent,
38 conditioned that such applicant, as a station operator,
39 will make compensation for any damage to a vehicle
40 during an inspection or adjustment due to negligence on
41 the part of such station operator or employees thereof.

42 The superintendent shall properly supervise and cause
43 inspections to be made of such stations and shall revoke
44 and require the surrender of the permit issued to a
45 station which he finds is not properly equipped or
46 conducted. He shall maintain and post at his office and
47 at such other places as he may select lists of all stations
48 holding permits and of those whose permits have been
49 revoked.

**§17c-16-6. Assignment, transfer and posting of official
inspection station permit; issuance and
record of certificate of inspection; inspec-
tion fee.**

1 No permit for an official inspection station shall be
2 assigned or transferred or used at any location other
3 than therein designated and every said permit shall be
4 posted in a conspicuous place at the station location
5 designated.

6 The person operating any such station shall issue a
7 certificate of inspection and approval, upon an official
8 form, to the owner of a vehicle upon inspecting such
9 vehicle and determining that its equipment required

10 hereunder is in good condition and proper adjustment,
11 but otherwise no certificate shall be issued, except such
12 as may be issued pursuant to section two of this article.
13 When required by the superintendent, a record and
14 report shall be made of every inspection and every
15 certificate so issued.

16 A fee of not more than seven dollars may be charged
17 for an inspection and any necessary headlight adjust-
18 ment to proper focus, not including any replacement
19 parts required, and the issuance of such certificate, but
20 the imposition of such charge shall not be mandatory.

CHAPTER 88

(S. B. 403—By Senator Brackenrich)

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

AN ACT to amend and reenact section nine, article sixteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to operation of a motor vehicle without a valid certificate of inspection and approval; licensed dealers not required to display such certificate upon dealer owned vehicles; penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. INSPECTION OF VEHICLES.

§17C-16-9. Operation without certificate or failure to produce certificate; penalty for misdemeanor.

1 It is a misdemeanor for any owner or operator, or both
2 owner and operator, of any vehicle required to be
3 inspected under subsection (a), section four of this
4 article, to operate or permit to be operated such vehicle

5 without having displayed thereon a current and valid
 6 certificate of inspection and approval or fail to produce
 7 same upon demand of any authorized person as desig-
 8 nated under subsection (a), section four of this article:
 9 *Provided*, That a dealer licensed to sell new vehicles
 10 under the provision of article six, chapter seventeen-a
 11 of this code shall not be required to display a certificate
 12 of inspection and approval upon any new vehicle
 13 belonging to such dealer when such vehicle has not been
 14 titled or delivered to a purchaser, and when such car
 15 is not to be used in the demonstrator fleet or otherwise
 16 routinely driven on the highways or roads of this state.

17 Unless another penalty is by the laws of this state
 18 provided, every person convicted of a misdemeanor for
 19 operating a vehicle without having displayed thereon a
 20 current and valid certificate of inspection and approval
 21 or for failure to produce such certificate upon demand
 22 of an authorized person shall be punished by a fine of
 23 not more than one hundred dollars.

CHAPTER 89

(S. B. 734—Originating in the Senate Committee on Government Organization)

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

AN ACT to amend and reenact section two, article two, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to an abstract of operating record, deleting reference to vehicle registration, and increasing the fee to be collected for such abstract.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ADMINISTRATION OF LAW.

§17D-2-2. Commissioner to furnish abstract of operating record; fee for abstract.

1 The commissioner shall upon request furnish any

2 person a certified abstract of the operating record of any
3 person subject to the provisions of this chapter, and if
4 there shall be no record of any conviction of such person
5 of a violation of any law relating to the operation of a
6 motor vehicle or of any injury or damage caused by such
7 person, the commissioner shall so certify. The commis-
8 sioner shall collect five dollars for each abstract.

CHAPTER 90

(H. B. 2062—By Delegate Sattes)

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

AN ACT to amend and reenact sections five, six and eight, article four, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to proof of financial responsibility in the case of suspension or revocation of an operator's license.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE.

§17D-4-5. Suspension for nonpayment of judgments; exceptions.

§17D-4-6. Suspension to continue until judgments paid and proof given; effect of discharge in bankruptcy.

§17D-4-8. Installment payment of judgments; defaults.

§17D-4-5. Suspension for nonpayment of judgments; exceptions.

1 (a) The commissioner upon receipt of a certified copy
2 of a judgment, shall forthwith suspend the license and
3 registration and any nonresident's operating privilege of
4 any person against whom such judgment was rendered,
5 except as hereinafter otherwise provided in this section
6 and in section eight of this article.

7 (b) If the judgment creditor consents in writing, in
8 such form as the commissioner may prescribe, that the
9 judgment debtor be allowed license and registration or
10 nonresident's operating privilege, the same may be
11 allowed by the commissioner, in his discretion, for six
12 months from the date of such consent and thereafter
13 until such consent is revoked in writing,
14 notwithstanding default in the payment of such judg-
15 ment, or of any installments thereof prescribed in
16 section eight of this article.

17 (c) The commissioner shall not, however, suspend a
18 license, registration, or nonresident's operating privilege
19 of any person if the insurance applicable to such person
20 or the vehicle being operated by him was with a
21 company which was authorized to transact business in
22 this state and which, subsequent to an accident involv-
23 ing the owner or driver and prior to settlement of the
24 claim therefor went into liquidation so that no benefit
25 accrued to the owner or driver by reason of having
26 provided such insurance.

**§17D-4-6. Suspension to continue until judgments paid and
proof given; effect of discharge in
bankruptcy.**

1 (a) Such license, registration and nonresident's
2 operating privileges shall remain so suspended and shall
3 not be renewed, nor shall any such license or registra-
4 tion be thereafter issued in the name of such person,
5 including any person not previously licensed, unless and
6 until every such judgment is stayed, satisfied in full or
7 to the extent hereinafter provided subject to the
8 exemptions stated in sections five and eight of this
9 article.

10 (b) A discharge in bankruptcy following the render-
11 ing of any such judgment shall not relieve the judgment
12 debtor from any of the requirements of this article.

§17D-4-8. Installment payment of judgments; default.

1 (a) A judgment debtor upon five days' notice to the
2 judgment creditor may, for the sole purpose of giving
3 authority to the commissioner to authorize such judg-

4 ment debtor to operate a motor vehicle thereafter, apply
5 to the court in which such judgment was rendered for
6 the privilege of paying such judgment in installments
7 and the court, in its discretion and without prejudice to
8 any other legal remedies which the judgment creditor
9 may have, may so order and fix the amounts and times
10 of payment of the installments.

11 (b) The commissioner shall not suspend a license,
12 registration, or nonresident's operating privilege, and
13 shall restore any license, registration, or nonresident's
14 operating privilege suspended following nonpayment of
15 a judgment, when the judgment debtor obtains such an
16 order permitting the payment of such judgment in
17 installments, and while the payment of any said
18 installment is not in default.

19 (c) In the event the judgment debtor fails to pay any
20 installment as specified by such order, then upon notice
21 of such default, the commissioner shall forthwith
22 suspend the license, registration, or nonresident's
23 operating privilege of the judgment debtor until such
24 judgment is satisfied, as provided in this chapter.

CHAPTER 91

(Com. Sub. for H. B. 2096—By Delegates Reid and Whitt)

[Passed January 20, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, relating to municipal elections generally; the holding of special elections in cases wherein all of the municipal officers or governing body of any Class IV town or village have been removed from office by order of a court of competent jurisdiction; setting forth the time and manner in which such election shall be held; the calling and holding of party conventions with respect thereto; providing for the publication of notice of such convention; the term of office of such persons

elected to office at such special elections; procedures relating to such elections; the applicability of other statutes; and providing for the expiration of the provisions of said section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

§8-5-5a. Special election of officers when all municipal officers removed by order of court; procedures applicable to such special elections; terms of office of persons elected.

1 (a) Any other provision of this code to the contrary
2 notwithstanding a special election shall be held in every
3 Class IV town or village wherein a vacancy has been
4 created in all of the elective offices of such town or
5 village by reason of the removal from office of all of the
6 occupants thereof by order of any court of competent
7 jurisdiction upon a petition of quo warranto or other
8 proceeding and where such order has designated or
9 appointed a person or persons to temporarily manage or
10 govern the affairs of such town or village. Such election
11 shall be held on a Tuesday not earlier than ninety days
12 nor later than one hundred twenty days from the date
13 of the entry of the order removing such persons from
14 office, which order shall hereinafter be referred to as
15 the order of removal.

16 (b) Within seventy days of the entry of the order of
17 removal, as provided in subsection (a) of this section, the
18 members of the several political parties which fielded
19 candidates at the next preceding election at which the
20 officers and governing board of such town or village
21 were elected, shall meet in separate conventions on the
22 same day, which date shall be designated in the order

23 by which the officers and governing body of the affected
24 town or village were removed from office. If the order
25 does not so provide, then the person designated in the
26 order of removal shall designate such date. Notice of the
27 convention date, time, place and subject matter shall be
28 published in a Class I legal advertisement in a news-
29 paper of general circulation serving the town or village.
30 At such convention such parties shall nominate their
31 respective candidates for mayor, recorder, municipal
32 council or such other officers as may be required to be
33 elected by the charter of such town or village or as may
34 be required by general law in the absence of any such
35 charter provision. At such conventions each of such
36 parties shall nominate one ballot commissioner, two
37 election commissioners, one poll clerk and two persons
38 to serve as members of a board of canvassers who shall
39 serve in their respective capacities at the election
40 required by this section. Such parties may also select
41 alternate nominees for such election officials.

42 The names of the candidates and election officials so
43 chosen shall be certified by the chairman and secretary
44 of the party convention to the court which ordered the
45 removal from office of such municipal officers within
46 three days next following the sine die adjournment of
47 the convention. Such certification shall also include the
48 names of all of the nominated election officials chosen
49 to represent each party at the special election to be held
50 pursuant to this section and their respective alternates,
51 if any. From the nominees for election officials, one
52 ballot commissioner, one election commissioner and one
53 poll clerk shall be chosen in the manner specified by the
54 person designated in the order of removal to conduct or
55 oversee such election.

56 (c) Such person so designated in the order of removal
57 shall perform all of the functions otherwise assigned by
58 general law and municipal ordinance to the municipal
59 recorder and council for the conduct of elections. Such
60 person shall also serve as one of three ballot commission-
61 ers for the purpose of preparing ballots and conducting
62 absentee voting. Further, such person shall also see to
63 the training of the designated election officials, the

64 testing of voting equipment, if necessary, the proper
65 delivery of election supplies and shall serve as a member
66 of the board of canvassers for the tabulating of the
67 results of the special election required by this section.
68 A number of observers, representing the public at large
69 or the respective political parties fielding candidates at
70 such election, as shall not interfere with the orderly
71 conduct or canvassing thereof shall be permitted.

72 (d) All ballots to be used in such special election shall
73 be delivered to the person designated to conduct and
74 oversee the special election mandated herein not later
75 than the twenty-ninth day next preceding the date of
76 such special elections. All absentee ballots shall be cast
77 not earlier than the twenty-eighth day next preceding
78 the election nor later than five o'clock p. m., of the
79 Saturday next preceding such election.

80 (e) If the affected Class IV town or village normally
81 elects its officers for terms of two years and if the
82 special election required by this section shall be held
83 within one hundred twenty days of the next regularly
84 scheduled municipal election to be held in such Class IV
85 town or village, then such next regularly scheduled
86 municipal election shall not be held and the persons
87 elected at such special election shall hold their respec-
88 tive offices until the termination of the next ensuing two
89 year term.

90 (f) (1) The provisions of this section shall have general
91 application and shall also be applicable to any circum-
92 stance or Class IV town or village wherein all of the
93 elective officers thereof have been removed from their
94 respective offices and such offices are vacant on the
95 effective date of this section.

96 (2) All of the provisions of this code relating to the
97 conduct of municipal elections not in conflict with this
98 section shall govern such special elections.

99 (g) The provisions of this section shall expire and be
100 of no force or effect from and after the first day of July
101 in the year one thousand nine hundred eighty-nine.

CHAPTER 92

(H. B. 2789—By Delegate Rogers)

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

AN ACT to amend and reenact section twelve, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment of commissioners to municipal firemen's civil service commissions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

PART IV. CIVIL SERVICE FOR PAID FIRE DEPARTMENT.

§8-15-12. Firemen's civil service commission generally.

1 In every municipality having a paid fire department,
2 there shall be a "Firemen's Civil Service Commission."
3 The commission shall consist of three commissioners,
4 one of whom shall be appointed by the mayor of the
5 municipality; one of whom shall be appointed by the
6 local international association of fire fighters in the
7 event that said local exists in the municipality, or in case
8 no such local exists in the municipality, then by the local
9 central body of the West Virginia Federation of Labor
10 AFL-CIO in the event that said central body exists in
11 the municipality, or in case that no such central body
12 exists in the municipality, then by the West Virginia
13 Federation of Labor AFL-CIO; and the third shall be
14 appointed by the local chamber of commerce, or if there
15 be none, by a local businessmen's association. The
16 individuals appointed commissioners shall be qualified
17 voters of the municipality for which they are appointed;
18 and at least two of said commissioners shall be individ-
19 uals in full sympathy with the purposes of the civil
20 service provisions of this article. Not more than two of

21 the said commissioners, at any one time, shall be
22 adherents of the same political party. Of the three
23 original appointments in each municipality, the first
24 commissioner shall be appointed by the mayor and shall
25 serve for six years from the date of his appointment; the
26 second commissioner shall be appointed by the local
27 trades board, or in the absence of such board, by the
28 international association of fire fighters, and shall serve
29 for four years from the date of his appointment; and the
30 third commissioner shall be appointed by the local
31 chamber of commerce or local businessmen's association
32 and shall serve for two years from the date of his
33 appointment. In the event there is no local chamber of
34 commerce or local businessmen's association at the time
35 any appointment is to be made by it, such appointment
36 shall be made by the other two commissioners by mutual
37 agreement. After the original appointments, all appoint-
38 ments shall be made for periods of four years each by
39 the appointing authority hereinbefore designated. In the
40 event that any commissioner of said civil service
41 commission shall cease to be a member thereof by virtue
42 of death, final removal or other cause, a new commis-
43 sioner shall be appointed to fill the unexpired term of
44 said commissioner within ten days after said ex-
45 commissioner shall have ceased to be a member of said
46 commission. Such appointment shall be made by the
47 officer or body who in the first instance appointed the
48 commissioner who is no longer a member of the
49 commission. Each year the three members of the
50 commission shall, together, elect one of their number to
51 act as president of the commission, who shall serve as
52 president for one year. The mayor may, at any time,
53 remove any commissioner or commissioners for good
54 cause, which shall be stated in writing and made a part
55 of the records of the commission: *Provided*, That once
56 the mayor has removed any commissioner, the mayor
57 shall within ten days thereafter file in the office of the
58 clerk of the circuit court of the county in which the
59 municipality or the major portion of the territory
60 thereof is located a petition setting forth in full the
61 reason for said removal and praying for the confirma-
62 tion by said circuit court of the action of the mayor in

63 so removing the said commissioner. A copy of said
64 petition shall be served upon the commissioner so
65 removed simultaneously with its filing in the office of
66 the clerk of the circuit court and shall have precedence
67 on the docket of said court and shall be heard by said
68 court as soon as practicable upon the request of the
69 removed commissioner or commissioners. All rights
70 herein vested in said circuit court may be exercised by
71 the judge thereof in vacation. In the event that no term
72 of the circuit court is being held at the time of the filing
73 of said petition, and the judge thereof cannot be reached
74 in the county wherein the petition was filed, said
75 petition shall be heard at the next succeeding term of
76 said circuit court, whether regular or special, and the
77 commissioner or commissioners so removed shall remain
78 removed until a hearing is had upon the petition of the
79 mayor. The court or the judge thereof in vacation shall
80 hear and decide the issues presented by said petition.
81 The mayor or commissioner or commissioners, as the
82 case may be, against whom the decision of the court or
83 the judge thereof in vacation shall be rendered, shall
84 have the right to petition the supreme court of appeals
85 for a review of the decision of the circuit court or the
86 judge thereof in vacation as in other civil cases. In the
87 event that the mayor shall fail to file his petition in the
88 office of the clerk of the circuit court, as hereinbefore
89 provided, within ten days after the removal of said
90 commissioner or commissioners, such commissioner or
91 commissioners shall immediately resume his or their
92 position or positions as a member or members of the
93 firemen's civil service commission.

94 Any resident of the municipality shall have the right
95 at any time to file charges against and seek the removal
96 of any member of the firemen's civil service commission
97 of such municipality. Such charges shall be filed in the
98 form of a petition in the office of the clerk of the circuit
99 court of the county in which the municipality or the
100 major portion of the territory thereof is located, and a
101 copy of said petition shall be served upon the commis-
102 sioner or commissioners sought to be removed. Said
103 petition shall be matured for hearing and heard by said
104 circuit court or the judge thereof in vacation in the same

105 manner as civil proceedings in the circuit courts of this
106 state are heard, and the party against whom the circuit
107 court's decision is rendered shall have the right to
108 petition the supreme court of appeals for a review of the
109 action of the circuit court, as in other civil cases.

110 No commissioner shall hold any other office (other
111 than the office of notary public) under the United States,
112 this state or any municipality, county or other political
113 subdivision thereof; nor shall any commissioner serve on
114 any political committee or take any active part in the
115 management of any political campaign.

CHAPTER 93

(H. B. 2850—By Delegate Schifano)

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

AN ACT to amend and reenact sections three, five, six, seven, eight, nine, ten and thirteen, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to general retirement systems for Class I, II and III cities and enabling cities to improve benefits in the following areas: Calculation of average salary, participation of employees hired after age sixty, pretax employee contributions, additional service credit for members who served in the armed forces, crediting of interest on contributions, early retirement at age fifty-five, timing of election of options, ad hoc cost-of-living increases, workers' compensation offsets for disability and death benefits, elimination of maximum disability pension and elimination of maximum survivor pension.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY;
POLICEMEN'S PENSION AND RELIEF FUND;
FIREMEN'S PENSION AND RELIEF FUND;
PENSION PLANS FOR EMPLOYEES OF WA-
TERWORKS SYSTEM, SEWERAGE SYSTEM OR
COMBINED WATERWORKS AND SEWERAGE
SYSTEM.**

**PART II. GENERAL RETIREMENT SYSTEMS FOR
CLASS I, II AND III CITIES.**

- §8-22-3. Definitions.
 §8-22-5. Employees eligible for participation in fund.
 §8-22-6. Contributions; prior, earned and total service credits; service breaks.
 §8-22-7. Retirement pensions.
 §8-22-8. Disability pensions; annuities.
 §8-22-9. Death benefits; return of contributions.
 §8-22-10. Contributions by city.
 §8-22-13. Reports by board of trustees.

§8-22-3. Definitions.

1 For the purpose of sections two through fifteen of this
2 article:

3 (a) "Prior service credit" shall mean the number of
4 years that the member has been in the service of the city
5 prior to the effective date of the employees retirement
6 and benefit fund;

7 (b) "Earned service credit" shall mean the number of
8 years that the member has contributed to the employees
9 retirement and benefit fund;

10 (c) "Total service credit" shall mean the total of all
11 prior service credit and all earned service credit;

12 (d) "Fund" shall mean the employees retirement and
13 benefit fund;

14 (e) "Board" shall mean the board of trustees of the
15 fund;

16 (f) "Member" shall mean an eligible employee of the
17 city, who is a member of the fund;

18 (g) "Total disability in line of duty" shall mean total
19 and permanent disablement from performing any work
20 for pay, whether for the city by which employed at date

21 of disability or other employer, which shall be caused
22 by accidental injury sustained in the course of the
23 operations usual to his employment and while in line of
24 duty, and shall include all operations necessary, incident
25 or appurtenant thereto, or connected therewith, whether
26 such operations are conducted at the usual place of
27 employment or elsewhere in connection with or in
28 relation to his usual and customary employment;

29 (h) "Total disability not in line of duty" shall mean
30 total and permanent disablement from performing any
31 work for pay, whether for the city by which employed
32 at date of disability or other employer, from any cause
33 other than that set forth in subdivision (g) of this
34 section;

35 (i) The term "actuarial equivalent" shall mean any
36 annuity of equal value to the accumulated contributions,
37 annuity or benefit when computed upon the basis of the
38 actuarial tables in use by the fund;

39 (j) "Monthly salary" shall mean the amount earned
40 each month by a member as an employee of the city:
41 *Provided*, That to and including June thirty, one
42 thousand nine hundred sixty-seven, the maximum
43 amount of salary to be considered hereunder for
44 purposes of contributions and in the computation of
45 benefits shall be four hundred dollars per month; and

46 (k) "Average salary" shall mean the highest annual
47 average salary earned by a member during a period of
48 five consecutive years within the total service of the
49 member, subject to a maximum amount of four hundred
50 dollars per month to and including June thirty, one
51 thousand nine hundred sixty-seven, and no such maxi-
52 mum amount after such date, but effective the first day
53 of January, one thousand nine hundred eighty-seven, a
54 city may provide that average salary be based on a three
55 consecutive year period.

§8-22-5. Employees eligible for participation in fund.

1 Employees eligible for participation in the fund shall
2 include all employees who are employed by the city on

3 a permanent basis. The following employees, however,
4 shall not be eligible for participation in the fund:

5 (1) Appointive members of administrative boards and
6 commissions, except employees of such boards and
7 commissions;

8 (2) Individuals employed under contract for a definite
9 period or for the performance of a particular or special
10 service;

11 (3) Employees serving on a part-time basis of less
12 than one-half time;

13 (4) Policemen and firemen covered by a policemen's
14 pension and relief fund or firemen's pension and relief
15 fund;

16 (5) Employees who are paid in part by the state,
17 county or other governmental agency, and only in part
18 by the city;

19 (6) Employees who are past sixty years of age on the
20 effective date of the fund; and

21 (7) Employees who are hired after the effective date
22 of the fund and who were past sixty years of age at the
23 time they were so employed. Effective the first day of
24 January, one thousand nine hundred eighty-seven, a city
25 may disregard this exception.

26 In case of doubt, the board of trustees of the fund may
27 make determination as to any individual's eligibility to
28 become a member of the fund.

29 All employees eligible for participation at the effective
30 date of the fund shall become members of the fund,
31 unless they file a written election not to become a
32 member within thirty days after the effective date of the
33 fund.

34 Effective the first day of January, one thousand nine
35 hundred eighty-seven, a city may provide that em-
36 ployees who did not participate in the fund when first
37 eligible, or who were not permitted to join the fund
38 when they were first hired due to the prior age sixty
39 limitation, may now participate. Such members may
40 purchase prior service by paying into the fund the

41 employee contributions they would have contributed had
42 they been in the fund plus interest at the rate of six
43 percent annually. Members shall be given two years to
44 pay these contributions.

§8-22-6. Contributions; prior, earned and total service credits; service breaks.

1 Until June thirty, one thousand nine hundred sixty-
2 seven, each member shall pay into the fund six percent
3 of his monthly salary up to four hundred dollars a
4 month. After June thirty, one thousand nine hundred
5 sixty-seven, each member shall contribute six percent of
6 his monthly salary without any such maximum limita-
7 tion. Effective the first day of January, one thousand
8 nine hundred eighty-seven, a city may provide that
9 contributions made by a member shall be before-tax, as
10 permitted by section 414(h)(2) of the Internal Revenue
11 Code. Each member shall continue to make such
12 contributions until such time as such member retires or
13 until he has contributed to the fund for a period of
14 thirty-five years, that is, has thirty-five years of "earned
15 service credit."

16 For prior service, each participating employee, in the
17 employ of the city on the effective date of the fund, shall
18 be credited, as of such date, with a prior service credit
19 equal to the period or periods of service that the member
20 has rendered to the city prior to the effective date of the
21 fund. Any employee who is in the employ of the city on
22 the effective date of the fund and who becomes a
23 member of the fund shall be entitled to prior service
24 credit even though such prior service was not continu-
25 ous. Any individual who is not in the employ of the city
26 on the effective date of the fund but who has been
27 employed by the city in the past shall be entitled to prior
28 service credit if he returns to the service of the city
29 within two years from the date of the termination of his
30 service and becomes a member of the fund within such
31 two-year period.

32 Effective the first day of January, one thousand nine
33 hundred eighty-seven, a city may provide that members
34 who have been honorably discharged from the military

35 shall receive up to two years prior service credit for
36 military service prior to their employment with the city.

37 A member upon separation from the service shall be
38 entitled to withdraw his contributions without interest
39 in lieu of any benefits to which he may be entitled. A
40 city may provide that contributions are credited with
41 interest at the rate of six percent compounded annually
42 from the first day of January, one thousand nine
43 hundred eighty-seven. If such employee returns to the
44 service of the city within two years and becomes a
45 member of the fund, he shall be considered as a new
46 employee and shall have forfeited all prior service
47 credits unless he shall repay to the fund in cash at the
48 time of reemployment the amount of money which he
49 has withdrawn plus four percent interest compounded
50 annually on said amount during the time he was
51 separated from the service, but effective the first day
52 of January, one thousand nine hundred eighty-seven, a
53 city may require six percent interest. If, however, the
54 break in service of such member is more than two years,
55 he shall not be entitled to any prior service credit nor
56 shall he be entitled to redeposit withdrawals but he shall
57 reenter the fund as a new member.

§8-22-7. Retirement pensions.

1 (a) After the effective date of the fund, any member
2 of the fund who has at least ten years of continuous total
3 service credit shall receive a vested right to a retirement
4 pension which he may exercise upon or after attainment
5 of age sixty. When he has attained the age of sixty years
6 he may, at his option, apply for a retirement pension,
7 the amount thereof to be determined in accordance with
8 the provisions of subsection (e) of this section.

9 (b) Retirement for all members of the fund shall be
10 compulsory at the age of seventy subject to the following
11 conditions: The employee may be permitted to continue
12 in the service if he so desires and if his services are still
13 valuable to the city. Whether an employee's services are
14 valuable at the age of seventy shall be determined by
15 the appointing officer of the city. If he determines that
16 such services are valuable, his determination must be

17 certified to the board for approval. If the board
18 approves, the employee may continue in the service of
19 the city. The appointing officer shall annually certify to
20 the board relative to the ability and competency of all
21 employees over age seventy. The amount of any pension
22 under the provisions of this subsection shall be deter-
23 mined in accordance with the provisions of subsection
24 (e) of this section.

25 (c) Effective the first day of January, one thousand
26 nine hundred eighty-seven, a city may provide that any
27 member of the fund who has at least ten years of
28 continuous total service credit shall receive a vested
29 right to a retirement pension which he may exercise
30 upon or after attainment of age fifty-five. When he has
31 attained the age of fifty-five years he may, at his option,
32 apply for a retirement pension, the amount thereof to
33 be determined in accordance with the provisions of
34 subsection (e) of this section, reduced by one quarter of
35 one percent for each month (three percent per year) by
36 which his retirement date precedes age sixty, except
37 that if his age plus years of continuous service credit is
38 equal to or greater than eighty-five, the benefit shall not
39 be reduced.

40 (d) Although he has not attained the age of sixty, any
41 member who has thirty-five years' total service and who
42 becomes so physically or mentally disabled as to render
43 him unfit for the performance of the duties of the
44 position he occupies shall be entitled to an annual
45 retirement pension, the amount thereof to be determined
46 in accordance with the provisions of subsection (e) of
47 this section.

48 (e) A member of the fund, upon retirement, shall be
49 entitled to the following annual retirement pension,
50 payable in twelve monthly installments:

51 For thirty-five years of total service credit to and
52 including twenty-four years of total service credit, fifty
53 percent of average salary plus one and two-thirds
54 percent of average salary per year of service for each
55 year above twenty-three years;

56 For twenty-three years of total service credit, fifty

57 percent of average salary: *Provided*, That if a member
58 has twenty-three years of total service credit he shall be
59 entitled to a minimum retirement pension of one
60 hundred dollars per month;

61 For twenty-two years of total service credit, forty-nine
62 percent of average salary;

63 For twenty-one years of total service credit, forty-
64 eight percent of average salary;

65 For twenty years of total service credit, forty-seven
66 percent of average salary;

67 For nineteen years of total service credit, forty-five
68 percent of average salary;

69 For eighteen years of total service credit, forty-three
70 percent of average salary;

71 For seventeen years of total service credit, forty-one
72 percent of average salary;

73 For sixteen years of total service credit, thirty-nine
74 percent of average salary;

75 For fifteen years of total service credit, thirty-six
76 percent of average salary;

77 For fourteen years of total service credit, thirty-three
78 percent of average salary;

79 For thirteen years of total service credit, thirty-one
80 percent of average salary;

81 For twelve years of total service credit, twenty-nine
82 percent of average salary;

83 For eleven years of total service credit, twenty-seven
84 percent of average salary; and

85 For ten years of continuous total service credit,
86 twenty-five percent of average salary.

87 The rate of a retirement pension shall be prorated for
88 any fractional part of the total service credit of an
89 employee of less than a full year.

90 (f) With the condition that no optional benefit shall be
91 effective if the member dies within thirty days after the

92 effective date of his retirement, such member may elect
93 at least one year prior to such effective date of his
94 retirement to receive a lesser retirement pension, on a
95 joint and last survivor basis, in order to provide, on an
96 actuarial equivalent basis, an annuity to a designated
97 beneficiary under any of the following two options:

98 Option 1. Upon his death while on retirement, his
99 lesser retirement pension shall be continued throughout
100 the life of and paid to such individual having an
101 insurable interest in his life, as he shall have named in
102 a written designation duly acknowledged and filed with
103 the board.

104 Option 2. Upon his death while on retirement, one
105 half of his lesser retirement pension shall be continued
106 throughout the life of and paid to such individual having
107 an insurable interest in his life as he shall have named
108 in a written designation duly acknowledged and filed
109 with the board.

110 Effective the first day of January, one thousand nine
111 hundred eighty-seven, a city may provide that an
112 election may be made at any time prior to the date his
113 benefits commence.

114 (g) A member who has attained the age of sixty years
115 and who has less than ten years' total service credit shall
116 be entitled to an annuity which shall be the actuarial
117 equivalent of his total accumulation account at the time
118 of his retirement.

119 (h) Effective the first day of January, one thousand
120 nine hundred eighty-seven, a city may provide that if an
121 actuarial valuation of the plan determines that the
122 required city contribution is less than six percent of
123 payroll, then the board of trustees may provide ad hoc
124 cost-of-living increases to retired members and benefi-
125 ciaries, provided such change does not increase the city
126 cost to an amount greater than six percent of payroll.
127 Such cost-of-living increases are limited to the increase
128 in the national consumer price index.

§8-22-8. Disability pensions; annuities.

1 A member may qualify for a disability pension under
2 any one of the following mutually exclusive provisions:

3 (1) If a member receives total disability in line of
4 duty, he shall be entitled during the time of his
5 disability to a monthly disability pension equal to fifty
6 percent of the monthly salary of the member at date of
7 disability: *Provided*, That the minimum payment shall
8 be one hundred dollars per month. Any benefits payable
9 from the retirement and benefit fund shall be reduced
10 by benefits payable from workers' compensation due to
11 the total disability of the member.

12 (2) If a member receives total disability not in line of
13 duty while an employee of the city after he has had at
14 least ten years' total service credit and such member is
15 not entitled to a retirement pension under the provisions
16 of section seven of this article, he shall be entitled
17 during the time of his disability to one half of the
18 retirement pension to which he would have been entitled
19 under the provisions of said section seven had he been
20 sixty years of age at date of disability and had elected
21 to take retirement: *Provided*, That he shall be entitled
22 to a minimum payment of fifty dollars per month and
23 a maximum payment of one hundred dollars per month.
24 Effective the first day of January, one thousand nine
25 hundred eighty-seven, a city may provide that the
26 maximum payment be three hundred dollars per month.

27 (3) If a member becomes so physically or mentally
28 disabled as to render him unfit for the performance of
29 the duties of the position he occupies, but his disability
30 does not constitute either total disability in line of duty
31 or total disability not in line of duty, and such member
32 has less than ten years' total service credit, he shall be
33 entitled to an annuity which shall be the actuarial
34 equivalent of his total accumulation at the date of his
35 disability.

36 The board of trustees of the fund shall order a periodic
37 reexamination of members of the fund receiving a
38 disability pension, and if the disability no longer exists
39 the payment thereunder shall be discontinued: *Provided*,
40 That no such reexamination of any such member shall
41 be ordered as aforesaid after such member attains the
42 age of sixty years.

§8-22-9. Death benefits; return of contributions.

1 (a) A beneficiary or beneficiaries of a deceased
2 member, which member was not receiving a retirement
3 pension under the provisions of section seven of this
4 article at the date of his death, may qualify for death
5 benefits under either of the following mutually exclusive
6 provisions:

7 (1) If the member died as a result of personal injury
8 or disease arising out of and in the course of his
9 employment with the city, the surviving spouse shall be
10 entitled during widowhood or widowerhood to a monthly
11 benefit equal to thirty-three and one-third percent of the
12 final monthly salary of the member, but not to exceed
13 one hundred and twenty-five dollars per month. In the
14 event there be no surviving spouse, or if remarriage
15 occurs before the youngest child attains age eighteen,
16 each child under age eighteen shall be entitled until age
17 eighteen to a monthly benefit equal to twenty percent
18 of the member's final monthly salary, subject to a total
19 payment to all such children of fifty percent of such
20 final monthly salary, or one hundred twenty-five dollars
21 per month, whichever is the lesser. If there be no
22 surviving spouse or children under age eighteen, the
23 deceased member's dependent father or mother or both,
24 the question of dependency to be determined by the
25 board, shall each be entitled until death to a monthly
26 payment equal to one sixth of the deceased member's
27 final monthly salary, but the payment to either parent
28 shall not exceed fifty dollars per month. Effective the
29 first day of January, one thousand nine hundred eighty-
30 seven, a city may provide that the above maximum
31 benefit limitations of this section nine shall no longer
32 apply. Any benefits payable from the retirement and
33 benefit fund shall be reduced by benefits payable from
34 workers' compensation due to the death of the member.

35 (2) If the member died from any cause other than that
36 stated in subdivision (1) of this subsection, and such
37 member at the date of his death had ten or more years'
38 total service credit, his beneficiary or beneficiaries shall
39 be entitled, for a period not to exceed ten years, to death
40 benefits in accordance with the retirement pension table

41 contained in section seven of this article. The death
42 benefits shall be paid to such individual or individuals
43 having an insurable interest in the member's life as such
44 member shall have nominated in a designation filed
45 with the board. As to any spouse beneficiary, the
46 marriage must have occurred at least one year prior to
47 the death of the member in order that the spouse may
48 be eligible for benefits under this subdivision (2).

49 (b) If a member receiving a retirement pension under
50 the provisions of section seven of this article at the date
51 of his death dies with a spouse or beneficiary surviving
52 (concerning which retirement pension the optional
53 benefit provisions set forth in subsection (f) of said
54 section seven are not applicable), and such member had
55 been receiving such retirement pension for less than ten
56 years, such surviving spouse or beneficiary shall be
57 entitled to receive death benefits equivalent to the
58 deceased member's retirement pension for the remain-
59 ing period of ten years dating from the date of the
60 member's retirement. The death benefits shall be paid
61 to such individual or individuals having an insurable
62 interest in the member's life as such member shall have
63 nominated in a designation filed with the board; but a
64 surviving spouse shall not be entitled to death benefits
65 under the provisions of this subsection unless such
66 surviving spouse was married to the member before the
67 date of his retirement and such marriage took place at
68 least one year prior to the date of the death of the
69 member. If the surviving spouse remarries, such
70 spouse's death benefits shall be terminated and shall not
71 be resumed upon subsequent change in the marital
72 status of such spouse.

73 (c) If a member dies with less than ten years' total
74 service credit so that he was not entitled to a retirement
75 pension during life, the member's total contributions to
76 the fund, without interest, shall be returned to such
77 individual or individuals having an insurable interest in
78 the member's life as such member shall have nominated
79 in a designation filed with the board, and in the absence
80 of any such designation, to the member's estate.

§8-22-10. Contributions by city.

1 Effective the first day of January, one thousand nine
2 hundred eighty-seven, the financial objective of each
3 municipality shall not be less than to contribute to the
4 fund annually an amount which, together with the
5 contributions from the members, will be sufficient to
6 meet the normal cost of the fund including the cost of
7 administration and amortize any actuarial deficiency
8 over a period of not more than forty years, but for those
9 funds in existence on the first day of January, one
10 thousand nine hundred eighty-seven, its actuarial
11 deficiency, if any, shall not be amortized over a period
12 longer than that which remains under its current
13 schedule. For purposes of determining this minimum
14 financial objective (1) the value of the fund's assets shall
15 be determined on the basis of any reasonable actuarial
16 method of valuation which takes into account fair
17 market value and (2) all costs, deficiencies, rate of
18 interest and other factors under the fund shall be
19 determined on the basis of actuarial assumptions and
20 methods which in aggregate are reasonable, taking into
21 account the experience of the fund and reasonable
22 expectations, and which in combination offer the
23 qualified actuary's best estimate of anticipated expe-
24 rience under the fund. If as a result of this legislation
25 a municipality's financial commitment to the fund is
26 materially increased, the municipality may elect to
27 phase in this increase over the five fiscal years com-
28 mencing the first day of January, one thousand nine
29 hundred eighty-seven.

§8-22-13. Reports by board of trustees.

1 The board of trustees for each retirement fund shall
2 have regularly scheduled actuarial valuation reports
3 prepared by a qualified actuary.

4 An actuarial valuation report shall be prepared at
5 least once every three years commencing with the later
6 of (1) the first day of July, one thousand nine hundred
7 eighty-seven, or (2) three years following the most
8 recently prepared actuarial valuation report.

9 For purposes of this section the term "qualified
10 actuary" means only an actuary who is a member of the

11 society of actuaries or the American academy of
12 actuaries. The qualified actuary shall be designated a
13 fiduciary and shall discharge his duties with respect to
14 a fund solely in the interest of the members and
15 members' beneficiaries of that fund. In order for the
16 standard of this section to be met, the qualified actuary
17 shall certify that the actuarial valuation report is
18 complete and accurate and that in his opinion the
19 technique and assumptions used are reasonable and
20 meet the requirements of this section of this article.

21 The board of trustees shall submit to the governing
22 body an annual report showing the condition of the fund
23 under its control. It shall certify in such report the
24 amount of accumulated cash and securities in the fund
25 and shall present a full account of the operation of the
26 system.

CHAPTER 94

(Com. Sub. for H. B. 2167—By Delegate Given)

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

AN ACT to amend article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-six-a, relating to supplemental pension benefits for retired policemen, firemen and their spouses, and tying those supplemental benefits to increases in the consumer price index.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; 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.

§8-22-26a. Supplemental pension benefits entitlement; benefit payable; application of section; construction.

1 (a) Commencing with the fiscal year beginning on the
2 first day of July, one thousand nine hundred eighty-
3 seven, any member receiving benefits and any surviving
4 spouse of a member receiving benefits under the
5 provisions of this article, is entitled to receive a
6 supplemental pension benefit if the member or the
7 surviving spouse meets the entitlement of subsection (b)
8 of this section.

9 (b) Entitlement to supplemental benefits under this
10 section is established if any member or surviving spouse
11 receives less than six hundred dollars per month in
12 pension benefits under this article during the fiscal year
13 ending on the thirtieth day of June, one thousand nine
14 hundred eighty-seven, less than seven hundred dollars
15 per month in pension benefits under this article during
16 the fiscal year ending on the thirtieth day of June, one
17 thousand nine hundred eighty-eight, less than eight
18 hundred dollars per month in pension benefits under
19 this article during the fiscal year ending on the thirtieth
20 day of June, one thousand nine hundred eighty-nine, less
21 than nine hundred dollars per month in pension benefits
22 under this article during the fiscal year ending on the
23 thirtieth day of June, one thousand nine hundred ninety,
24 less than one thousand dollars per month in pension
25 benefits under this article during the fiscal year ending
26 on the thirtieth day of June, one thousand nine hundred
27 ninety-one; entitlement means that the member or
28 surviving spouse shall receive the minimum pension
29 benefit defined in subsection (c) of this section.

30 (c) The member or surviving spouse entitled by
31 subsection (b) of this section shall receive as a supple-
32 mental pension benefit an amount based on a percentage
33 increase equal to any increase in the consumer price
34 index as calculated by the United States Department of
35 Labor, Bureau of Statistics, for the preceding year. The
36 supplemental pension benefit payable under the provi-
37 sions of this section shall be paid in equal monthly
38 installments and the amount of the benefit so paid shall

39 be considered in determining such member's or spouse's
40 eligibility for the supplemental pension benefit for any
41 subsequent fiscal year.

42 (d) This section applies only through the fiscal year
43 ending on the thirtieth day of June, one thousand nine
44 hundred ninety-two, and must be reviewed and reen-
45 acted prior to that date.

46 (e) This section shall be construed liberally to effec-
47 tuate the purpose of establishing minimum pension
48 benefits under this article for members and surviving
49 spouses.

CHAPTER 95

(Com. Sub. for H. B. 2141—By Delegates Roop and Hawse)

[Passed March 2, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two; and to amend and reenact section three, article seven, chapter sixty-one of said code, all relating to the training and certification of national guard security guards as law-enforcement officers; granting such security guards the power to make arrests on military installations; and making an exception to the prohibition against carrying dangerous weapons for members of the organized militia of the state while such members are employed as security guards to safeguard military property under the command of the adjutant general.

Be it enacted by the Legislature of West Virginia:

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

Chapter

15. Public Safety.

61. Crimes and Their Punishment.

CHAPTER 15. PUBLIC SAFETY.**ARTICLE 1B. NATIONAL GUARD.****§15-1B-22. Military facilities; security guards; qualifications; duties; powers.**

1 (a) Notwithstanding any provision of this code to the
2 contrary, bona fide members of the West Virginia
3 National Guard assigned by the adjutant general to
4 function as security guards to safeguard military
5 property of the state or of the United States who have
6 successfully completed a training program in law
7 enforcement approved by the adjutant general and the
8 superintendent of the West Virginia Department of
9 Public Safety, shall be deemed to have met all the
10 requirements for certification as a law-enforcement
11 officer set forth in section five, article twenty-nine,
12 chapter thirty of this code. Those members of the West
13 Virginia National Guard who are so designated as
14 security guards and who have successfully completed
15 such training program are hereby empowered:

16 (1) To make arrests on military installations of the
17 state or of the United States for any violations of the law
18 of this state or of the United States occurring on any
19 such military installation; and

20 (2) To cooperate with state and local authorities in
21 detecting and apprehending any person or persons
22 engaged in or suspected of the commission of any crime,
23 misdemeanor or offense against the law of this state or
24 of the United States, or of any ordinance of any
25 municipality of this state if such is committed or
26 attempted to be committed on a military installation in
27 this state.

28 (b) Any security guard, duly appointed by the adju-
29 tant general, knowing or having reasonable cause to
30 believe that a person has violated the law while situate
31 on a military installation, may make complaint in
32 writing before any court or officer having jurisdiction
33 and procure a warrant for such person.

34 (c) For the purposes of this section, the term "military
35 installation" shall mean a facility under the command
36 of the adjutant general.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**ARTICLE 7. DANGEROUS WEAPONS.****§61-7-3. Exceptions as to prohibition against carrying deadly weapons.**

1 Nothing in this article shall prevent any person from
2 carrying any such weapon as is mentioned in the first
3 section of this article, in good faith and not having
4 felonious purposes, upon his own premises; nor shall
5 anything herein prevent a person from carrying any
6 such weapon, unloaded, from the place of purchase to
7 his home or residence, or to a place of repair and back
8 to his home or residence; nor shall anything herein
9 prevent a guard at the West Virginia penitentiary duly
10 appointed in conformity with section five, article five,
11 chapter twenty-eight of the code of West Virginia, from
12 carrying any such weapon while on duty; nor shall
13 anything herein prevent a bona fide member of the
14 organized militia of this state, or of the reserve officers
15 component of the United States army, from carrying
16 such weapon while in the performance of his official
17 duties as such; nor shall anything herein prevent any
18 member of the organized militia of this state, whether
19 designated a civilian or otherwise, and whether in the
20 active service of the state or on state duty or otherwise,
21 from carrying such weapon during the hours such
22 member is employed as a security guard to safeguard
23 military property of the state or of the United States and
24 while such member is on facilities under the command
25 of the adjutant general; nor shall anything herein
26 prevent any member of a properly organized target-
27 shooting club authorized by law to obtain firearms by
28 purchase or requisition from this state, or from the
29 United States for the purpose of target practice, from
30 carrying any revolver or pistol mentioned in this article,
31 unloaded, from his home or place of residence to a place
32 of target practice, and from any such place of target
33 practice back to his home or residence, or using any
34 such weapon at such place of target practice in training
35 and improving his skill in the use of such weapons; but
36 nothing herein shall be construed to authorize any
37 employee of any person, firm or corporation doing

38 business in this state to carry, on or about the premises
39 of such employer, any such pistol, or other weapon
40 mentioned in this article, for which a license is herein
41 required, without having first obtained the license and
42 given the bond as herein provided.

43 The term "security guard" as used in this section shall
44 not be limited to only those persons with a military
45 designation as such security guard.

46 Notwithstanding any other provision of this article or
47 any other provision of this code, any resident, nonres-
48 ident or unnaturalized person may lawfully possess,
49 transport, carry and use any firearm he is permitted to
50 use for hunting under any valid license he has been
51 issued by the department of natural resources and
52 which he holds in his possession. At all times such
53 person shall comply with all of the requirements of law
54 set forth in this code and the rules and regulations
55 promulgated thereunder pertaining to possessing,
56 transporting, carrying and using firearms for hunting.

CHAPTER 96

(S. B. 741—Originating in the Senate Committee on the Judiciary)

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

AN ACT to amend and reenact section twenty, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the Nonintoxicating Beer Act; unlawful acts of brewers or manufacturers such as price discrimination between distributors and wholesalers; requiring the filing of brewery or dock price of beer with the commissioner with such prices becoming effective no sooner than fourteen days after filing; providing specific criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. NONINTOXICATING BEER.

§11-16-20. Unlawful acts of brewers or manufacturers; criminal penalties.

1 (a) It shall be unlawful:

2 (1) For any brewer or manufacturer, or any other
3 person, firm or corporation engaging in the business of
4 selling nonintoxicating beer, ale or other malt beverage
5 or cooler to a distributor or wholesaler, to discriminate
6 in price, allowance, rebate, refund, commission, discount
7 or service between distributors or wholesalers licensed
8 in West Virginia. "Discriminate," as used in this section,
9 shall mean granting of more favorable prices, allowan-
10 ces, rebates, refunds, commissions, discounts or services
11 to one West Virginia distributor or wholesaler than to
12 another.

13 (2) For any brewer or manufacturer, or any other
14 person, firm or corporation engaged in the business of
15 selling nonintoxicating beer, ale or other malt beverage
16 or malt cooler to a distributor or wholesaler, to sell or
17 deliver nonintoxicating beer, ale or other malt beverage
18 or malt cooler to any licensed distributor or wholesaler
19 unless and until such brewer, manufacturer, person,
20 firm or corporation, as the case may be, shall have filed
21 the brewery or dock price of such beer, ale or other malt
22 beverage or malt cooler, by brands and container sizes,
23 with the commissioner. No price schedule shall be put
24 into effect until fourteen days after receipt of same by
25 the commissioner: *Provided*, That any price reductions
26 shall remain in effect not less than thirty days.

27 (b) The violation of any provision of this section by
28 any brewer or manufacturer shall constitute grounds for
29 the forfeiture of the bond furnished by such brewer or
30 manufacturer in accordance with the provisions of
31 section twelve of this article.

CHAPTER 97

(H. B. 2246—By Delegates Minard and McKinley)

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

AN ACT to amend and reenact section sixteen, article one,
chapter twenty-two of the code of West Virginia, one

thousand nine hundred thirty-one, as amended; to amend and reenact section seven, article eight of said chapter; to amend and reenact section three, article thirteen of said chapter; and to amend and reenact sections two and twenty-six, article one, chapter twenty-two-b of said code, all relating to oil and gas; clarifying that permits, certifications, waivers, bonds, orders or authorizations issued by or favoring the department of mines, department of natural resources and other boards are continued; clarifying that after one discovery deep well is drilled it establishes a pool; clarifying the spacing order; clarifying the commissioner's considerations before establishing a drilling unit; continuing the oil and gas inspectors examining board following an audit by the joint committee on government operations; requiring operators to furnish performance bonds, letters of credit, and other forms of security prior to the issuance of a permit to drill oil or gas wells; requiring assignee or transferee to be bonded before such assignment or transfer.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section seven, article eight of said chapter be amended and reenacted; that section three, article thirteen of said chapter be amended and reenacted; and that sections two and twenty-six, article one, chapter twenty-two-b of said code be amended and reenacted, all to read as follows:

Chapter

22. Energy.

22B. Oil and Gas.

CHAPTER 22. ENERGY.

Article

- 1. Title; Purpose; Department of Energy.**
- 8. Oil and Gas Conservation.**
- 13. Oil and Gas Inspectors' Examining Board.**

ARTICLE 1. TITLE; PURPOSES; DEPARTMENT OF ENERGY.**§22-1-16. Jurisdiction vested in department; cooperation with other governments and agencies; continuation of permits, etc.**

1 Except as otherwise expressly provided in this
2 chapter or in chapters twenty-two-a or twenty-two-b of
3 this code, jurisdiction over the issuance of regulations,
4 or any and all permits and other governmental author-
5 izations required or to be required in all matters
6 pertaining to the exploration, development, production,
7 storage and recovery of coal, oil and gas, and other
8 mineral resources in this state including all safety,
9 conservation, land, water, waste disposal, reclamation,
10 and environmental regulations, permits and authoriza-
11 tions of such activities called for pursuant to articles
12 five, five-a, five-d and five-f, chapter twenty of this code,
13 and the enforcement and implementation thereof is
14 vested exclusively in the department of energy. The
15 department of energy is hereby designated as the lead
16 regulatory agency for this state for all purposes of
17 federal legislation relating to such activities.

18 The department of energy shall exercise all power and
19 duties vested in the director of the department of
20 natural resources pursuant to subsection (g), section
21 seven, article five-e, chapter twenty of this code, and in
22 the administrator of the office of oil and gas, and
23 shallow gas well review board pursuant to subsection
24 (h), section seven, article five-e, chapter twenty of this
25 code.

26 All permits, certifications, waivers, bonds, orders or
27 authorizations heretofore issued by or favoring the
28 department of mines, department of natural resources,
29 or any of the boards or commissions continued in effect
30 by this chapter shall be continued in effect but become
31 subject to the provisions of this chapter, chapter twenty-
32 two-a and chapter twenty-two-b of this code. All
33 permits, certifications, waivers, bonds, orders or
34 authorizations heretofore issued or favoring by the
35 department of mines or department of natural resources
36 shall become subject to the jurisdiction of the depart-

37 ment of energy. All permits, certifications, waivers,
38 bonds, orders or authorizations heretofore issued by or
39 favoring any of the boards or commissions continued in
40 effect by the provisions of this chapter shall remain
41 subject to the jurisdiction of those boards or commis-
42 sions.

ARTICLE 8. OIL AND GAS CONSERVATION.

§22-8-7. **Drilling units and the pooling of interests in
drilling units in connection with deep oil or
gas wells.**

1 (a) *Drilling units.*

2 (1) After one discovery deep well has been drilled
3 establishing a pool, an application to establish drilling
4 units may be filed with the commissioner by the
5 operator of such discovery deep well or by the operator
6 of any lands directly and immediately affected by the
7 drilling of such discovery deep well, or subsequent deep
8 wells in said pool, and the commissioner shall promptly
9 schedule a hearing on said application. Each application
10 shall contain such information as the commissioner may
11 prescribe by reasonable rules and regulations promul-
12 gated by him in accordance with the provisions of
13 section five of this article.

14 (2) Upon the filing of an application to establish
15 drilling units, notice of the hearing shall be given by the
16 commissioner. Each notice shall specify the date, time
17 and place of hearing, describe the area for which a
18 spacing order is to be entered, and contain such other
19 information as is essential to the giving of proper notice.

20 (3) On the date specified in such notice, the commis-
21 sioner shall hold a public hearing to determine the area
22 to be included in such spacing order and the acreage to
23 be contained by each drilling unit, the shape thereof,
24 and the minimum distance from the outside boundary
25 of the unit at which a deep well may be drilled thereon.
26 At such hearing the commissioner shall consider:

27 (i) The surface topography and property lines of the
28 lands underlaid by the pool to be included in such order;

29 (ii) The plan of deep well spacing then being em-
30 ployed or proposed in such pool for such lands;

31 (iii) The depth at which production from said pool has
32 been found;

33 (iv) The nature and character of the producing
34 formation or formations, and whether the substance
35 produced or sought to be produced is gas or oil or both;

36 (v) The maximum area which may be drained effi-
37 ciently and economically by one deep well; and

38 (vi) Any other available geological or scientific data
39 pertaining to said pool which may be of probative value
40 to the commissioner in determining the proper deep well
41 drilling units therefor.

42 To carry out the purposes of this article, the commis-
43 sioner shall, upon proper application, notice and hearing
44 as herein provided, and if satisfied after such hearing
45 that drilling units should be established, enter an order
46 establishing drilling units of a specified and approxi-
47 mately uniform size and shape for each pool subject to
48 the provisions of this section.

49 (4) When it is determined that an oil or gas pool
50 underlies an area for which a spacing order is to be
51 entered, the commissioner shall include in his order all
52 lands determined or believed to be underlaid by such
53 pool and exclude all other lands.

54 (5) No drilling unit established by the commissioner
55 shall be smaller than the maximum area which can be
56 drained efficiently and economically by one deep well:
57 *Provided*, That if at the time of a hearing to establish
58 drilling units, there is not sufficient evidence from
59 which to determine the area which can be drained
60 efficiently and economically by one deep well, the
61 commissioner may enter an order establishing tempor-
62 ary drilling units for the orderly development of the pool
63 pending the obtaining of information necessary to
64 determine the ultimate spacing for such pool.

65 (6) An order establishing drilling units shall specify
66 the minimum distance from the nearest outside boun-

67 dary of the drilling unit at which a deep well may be
68 drilled. The minimum distance provided shall be the
69 same in all drilling units established under said order
70 with necessary exceptions for deep wells drilled or being
71 drilled at the time of the filing of the application. If the
72 commissioner finds that a deep well to be drilled at or
73 more than the specified minimum distance from the
74 boundary of a drilling unit would not be likely to
75 produce in paying quantities or will encounter surface
76 conditions which would substantially add to the burden
77 or hazard of drilling such deep well, or that a location
78 within the area permitted by the order is prohibited by
79 the lawful order of any state agency or court, the
80 commissioner is authorized after notice and hearing to
81 make an order permitting the deep well to be drilled
82 at a location within the minimum distance prescribed
83 by the spacing order. In granting exceptions to the
84 spacing order, the commissioner may restrict the
85 production from any such deep well so that each person
86 entitled thereto in such drilling unit shall not produce
87 or receive more than his just and equitable share of the
88 production from such pool.

89 (7) An order establishing drilling units for a pool shall
90 cover all lands determined or believed to be underlaid
91 by such pool, and may be modified by the commissioner
92 from time to time, to include additional lands deter-
93 mined to be underlaid by such pool or to exclude lands
94 determined not to be underlaid by such pool. An order
95 establishing drilling units may be modified by the
96 commissioner to permit the drilling of additional deep
97 wells on a reasonably uniform pattern at a uniform
98 minimum distance from the nearest unit boundary as
99 provided above. Any order modifying a prior order shall
100 be made only after application by an interested operator
101 and notice and hearing as prescribed herein for the
102 original order: *Provided*, That drilling units established
103 by order shall not exceed one hundred sixty acres for
104 an oil well or six hundred forty acres for a gas well.

105 (8) After the date of the notice of hearing called to
106 establish drilling units, no additional deep well shall be
107 commenced for production from the pool until the order

108 establishing drilling units has been made, unless the
109 commencement of the deep well is authorized by order
110 of the commissioner.

111 (9) The commissioner shall, within forty-five days
112 after the filing of an application to establish drilling
113 units for a pool subject to the provisions of this section,
114 either enter an order establishing such drilling units or
115 dismiss the application.

116 (10) As part of the order establishing a drilling unit,
117 the commissioner shall prescribe just and reasonable
118 terms and conditions upon which the royalty interests
119 in the unit shall, in the absence of voluntary agreement,
120 be deemed to be integrated without the necessity of a
121 subsequent order integrating the royalty interests.

122 (b) *Pooling of interests in drilling units.*

123 (1) When two or more separately owned tracts are
124 embraced within a drilling unit, or when there are
125 separately owned interests in all or a part of a drilling
126 unit, the interested persons may pool their tracts or
127 interests for the development and operation of the
128 drilling unit. In the absence of voluntary pooling and
129 upon application of any operator having an interest in
130 the drilling unit, and after notice and hearing, the
131 commissioner shall enter an order pooling all tracts or
132 interests in the drilling unit for the development and
133 operation thereof and for sharing production therefrom.
134 Each such pooling order shall be upon terms and
135 conditions which are just and reasonable, and in no
136 event shall drilling be initiated on the tract of an
137 unleased royalty owner without his written consent.

138 (2) All operations, including, but not limited to, the
139 commencement, drilling or operation of a deep well,
140 upon any portion of a drilling unit for which a pooling
141 order has been entered, shall be deemed for all purposes
142 the conduct of such operations upon each separately
143 owned tract in the drilling unit by the several owners
144 thereof. That portion of the production allocated to a
145 separately owned tract included in a drilling unit shall,
146 when produced, be deemed for all purposes to have been

147 actually produced from such tract by a deep well drilled
148 thereon.

149 (3) Any pooling order under the provisions of this
150 subsection (b) shall authorize the drilling and operation
151 of a deep well for the production of oil or gas from the
152 pooled acreage; shall designate the operator to drill and
153 operate such deep well; shall prescribe the time and
154 manner in which all owners of operating interests in the
155 pooled tracts or portions of tracts may elect to partic-
156 ipate therein; shall provide that all reasonable costs and
157 expenses of drilling, completing, equipping, operating,
158 plugging and abandoning such deep well shall be borne,
159 and all production therefrom shared, by all owners of
160 operating interests in proportion to the net oil or gas
161 acreage in the pooled tracts owned or under lease to
162 each owner; and shall make provisions for payment of
163 all reasonable costs thereof, including a reasonable
164 charge for supervision and for interest on past-due
165 accounts, by all those who elect to participate therein.

166 (4) No drilling or operation of a deep well for the
167 production of oil or gas shall be permitted upon or
168 within any tract of land unless the operator shall have
169 first obtained the written consent and easement there-
170 for, duly acknowledged and placed of record in the office
171 of the county clerk, for valuable consideration of all
172 owners of the surface of such tract of land, which
173 consent shall describe with reasonable certainty, the
174 location upon such tract, of the location of such proposed
175 deep well, a certified copy of which consent and
176 easement shall be submitted by the operator to the
177 commissioner.

178 (5) Upon request, any such pooling order shall provide
179 just and equitable alternatives whereby an owner of an
180 operating interest who does not elect to participate in
181 the risk and cost of the drilling of a deep well may elect:

182 (i) Option 1. To surrender his interest or a portion
183 thereof to the participating owners on a reasonable basis
184 and for a reasonable consideration, which, if not agreed
185 upon, shall be determined by the commissioner; or

186 (ii) Option 2. To participate in the drilling of the deep
187 well on a limited or carried basis on terms and

188 conditions which, if not agreed upon, shall be deter-
189 mined by the commissioner to be just and reasonable.

190 (6) In the event a nonparticipating owner elects
191 Option 2, and an owner of any operating interest in any
192 portion of the pooled tract shall drill and operate, or pay
193 the costs of drilling and operating, a deep well for the
194 benefit of such nonparticipating owner as provided in
195 the pooling order, then such operating owner shall be
196 entitled to the share of production from the tracts or
197 portions thereof pooled accruing to the interest of such
198 nonparticipating owner, exclusive of any royalty or
199 overriding royalty reserved in any leases, assignments
200 thereof or agreements relating thereto, of such tracts or
201 portions thereof, or exclusive of one eighth of the
202 production attributable to all unleased tracts or portions
203 thereof, until the market value of such nonparticipating
204 owner's share of the production, exclusive of such
205 royalty, overriding royalty or one eighth of production,
206 equals double the share of such costs payable by or
207 charged to the interest of such nonparticipating owner.

208 (7) If a dispute shall arise as to the costs of drilling
209 and operating a deep well, the commissioner shall
210 determine and apportion the costs, within ninety days
211 from the date of written notification to the commissioner
212 of the existence of such dispute.

ARTICLE 13. OIL AND GAS INSPECTORS' EXAMINING BOARD.

§22-13-3. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally; continuation following audit.

1 (a) There is hereby continued an oil and gas inspec-
2 tors' examining board consisting of five members who,
3 except for the public representative on such board, shall
4 be appointed by the governor, by and with the advice
5 and consent of the Senate. Members may be removed
6 only for the same causes and like manner as elective
7 state officers. One member of the board who shall be the
8 representative of the public, shall be a professor in the
9 petroleum engineering department of the school of

10 mines at West Virginia University appointed by the
11 dean of said school; two members shall be persons who
12 by reason of previous training and experience may
13 reasonably be said to represent the viewpoint of
14 independent oil and gas operators; and two members
15 shall be persons who by reason of previous training and
16 experience may reasonably be said to represent the
17 viewpoint of major oil and gas producers.

18 The director for the division of oil and gas shall be
19 an ex officio member of the board and shall serve as
20 secretary of the board without additional compensation,
21 but he shall have no right to vote with respect to any
22 matter before the board.

23 The members of the board, except the public repre-
24 sentative, shall be appointed for overlapping terms of
25 eight years, except that the original appointments shall
26 be for terms of two, four, six and eight years, respec-
27 tively. Any member whose term expires may be
28 reappointed by the governor.

29 Each member of the board shall receive seventy-five
30 dollars per diem while actually engaged in the perfor-
31 mance of the work of the board, and shall receive
32 mileage at the rate of not more than fifteen cents for
33 each mile actually traveled going from the home of the
34 member to the place of the meeting of the board and
35 returning therefrom, which shall be paid out of the state
36 treasury upon a requisition upon the state auditor,
37 properly certified by such members of the board.

38 The public member shall serve as chairman of the
39 board.

40 Members of the board, before performing any duty,
41 shall take and subscribe to the oath required by section
42 five, article four of the constitution of West Virginia.

43 The board shall meet at such times and places as shall
44 be designated by the chairman. It shall be the duty of
45 the chairman to call a meeting of the board on the
46 written request of two members, or on the written
47 request of said director or the commissioner. Notice of
48 each meeting shall be given in writing to each member

49 by the secretary at least five days in advance of the
50 meeting. Three voting members shall constitute a
51 quorum for the transaction of business.

52 (b) In addition to other powers and duties expressly
53 set forth elsewhere in this article, the board shall:

54 (1) Establish, and from time to time revise, forms of
55 application for employment as an oil and gas inspector
56 and supervising inspector and forms for written
57 examinations to test the qualifications of candidates,
58 with such distinctions, if any, in the forms for oil and
59 gas inspector and supervising inspector as the board
60 may from time to time deem necessary or advisable;

61 (2) Adopt and promulgate reasonable rules and
62 regulations relating to the examination, qualification
63 and certification of candidates for appointment, and
64 relating to hearings for removal of inspectors or the
65 supervising inspector, required to be held by this article.
66 All of such rules and regulations shall be printed and
67 a copy thereof furnished by the secretary of the board
68 to any person upon request;

69 (3) Conduct, after public notice of the time and place
70 thereof, examinations of candidates for appointment. By
71 unanimous agreement of all members of the board, one
72 or more members of the board or an employee of the
73 department of energy may be designated to give to a
74 candidate the written portion of the examination;

75 (4) Prepare and certify to said director and the
76 commissioner a register of qualified eligible candidates
77 for appointment as oil and gas inspectors or as super-
78 vising inspectors, with such differentiation, if any,
79 between the certification of candidates for oil and gas
80 inspectors and for supervising inspectors as the board
81 may from time to time deem necessary or advisable. The
82 register shall list all qualified eligible candidates in the
83 order of their grades, the candidate with the highest
84 grade appearing at the top of the list. After each
85 meeting of the board held to examine such candidates
86 and at least annually, the board shall prepare and
87 submit to the said director and the commissioner a
88 revised and corrected register of qualified eligible

89 candidates for appointment, deleting from such revised
90 register all persons (a) who are no longer residents of
91 West Virginia, (b) who have allowed a calendar year to
92 expire without, in writing, indicating their continued
93 availability for such appointment, (c) who have been
94 passed over for appointment for three years, (d) who
95 have become ineligible for appointment since the board
96 originally certified that such persons were qualified and
97 eligible for appointment, or (e) who, in the judgment of
98 at least three members of the board, should be removed
99 from the register for good cause;

100 (5) Cause the secretary of the board to keep and
101 preserve the written examination papers, manuscripts,
102 grading sheets and other papers of all applicants for
103 appointment for such period of time as may be estab-
104 lished by the board. Specimens of the examinations
105 given, together with the correct solution of each
106 question, shall be preserved permanently by the
107 secretary of the board;

108 (6) Issue a letter or written notice of qualification to
109 each successful eligible candidate;

110 (7) Hear and determine proceedings for the removal
111 of inspectors or the supervising inspector in accordance
112 with the provisions of this article;

113 (8) Hear and determine appeals of inspectors or the
114 supervising inspector from suspension orders made by
115 said director pursuant to the provisions of section two,
116 article one, chapter twenty-two-b of this code: *Provided,*
117 That in order to appeal from any order of suspension,
118 an aggrieved inspector or supervising inspector shall
119 file such appeal in writing with the oil and gas
120 inspectors' examining board not later than ten days
121 after receipt of the notice of suspension. On such appeal
122 the board shall affirm the action of said director unless
123 it be satisfied from a clear preponderance of the
124 evidence that said director has acted arbitrarily;

125 (9) Make an annual report to the governor concerning
126 the administration of oil and gas inspection personnel in
127 the state service; making such recommendations as the
128 board considers to be in the public interest; and

129 (10) Render such advice and assistance to the director
130 of the division of oil and gas as he shall from time to
131 time determine necessary or desirable in the perfor-
132 mance of his duties.

133 (c) After having conducted a performance and fiscal
134 audit through its joint committee on government
135 operations, pursuant to section nine, article ten, chapter
136 four of this code, the Legislature hereby finds and
137 declares that the oil and gas inspectors' examining
138 board within the department of energy should be
139 continued and reestablished. Accordingly, notwithstand-
140 ing the provisions of section four, article ten, chapter
141 four of this code, the oil and gas inspectors' examining
142 board within the department of energy shall continue to
143 exist until the first day of July, one thousand nine
144 hundred ninety-three.

CHAPTER 22B. OIL AND GAS.

ARTICLE 1. DIVISION OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22B-1-2. Director—Powers and duties generally; departmental records open to public; inspectors.

§22B-1-26. Performance bonds; corporate surety or other security.

§22B-1-2. Director — Powers and duties generally; departmental records open to public; inspectors.

1 (a) The director of the division of oil and gas shall
2 have as his duty the supervision of the execution and
3 enforcement of matters related to oil and gas set out in
4 this article and in articles three and four of this chapter,
5 subject to review and approval of the commissioner.

6 (b) The director of the division of oil and gas is
7 authorized to enact rules and regulations necessary to
8 effectuate the above stated purposes, subject to review
9 and approval by the commissioner.

10 (c) The director shall have full charge of the oil and
11 gas matters set out in this article and in articles three
12 and four of this chapter, subject always to the direct
13 supervision and control of the commissioner of the
14 department of energy. In addition to all other powers

15 and duties conferred upon him, the director shall have
16 the power and duty to:

17 (1) Supervise and direct the activities of the division
18 of oil and gas and see that the purposes set forth in
19 subsections (a) and (b) of this section are carried out;

20 (2) Employ a supervising oil and gas inspector and oil
21 and gas inspectors upon approval by the commissioner;

22 (3) Supervise and direct such oil and gas inspectors
23 and supervising inspector in the performance of their
24 duties;

25 (4) Suspend for good cause any oil and gas inspector
26 or supervising inspector without compensation for a
27 period not exceeding thirty days in any calendar year;

28 (5) Prepare report forms to be used by oil and gas
29 inspectors or the supervising inspector in making their
30 findings, orders and notices, upon inspections made in
31 accordance with this chapter;

32 (6) Employ a hearing officer and such clerks, steno-
33 graphers and other employees, as may be necessary to
34 carry out his duties and the purposes of the division of
35 oil and gas and fix their compensation;

36 (7) Hear and determine applications made by owners,
37 well operators and coal operators for the annulment or
38 revision of orders made by oil and gas inspectors or the
39 supervising inspector, and to make inspections, in
40 accordance with the provisions of this article and
41 articles three and four of this chapter;

42 (8) Cause a properly indexed permanent and public
43 record to be kept of all inspections made by himself or
44 by oil and gas inspectors or the supervising inspector;

45 (9) Make annually a full and complete written report
46 to the commissioner as he may from time to time
47 request, so that the commissioner can complete the
48 preparation of the commissioner's annual report to the
49 governor of the state;

50 (10) Conduct such research and studies as the com-
51 missioner shall deem necessary to aid in protecting the

52 health and safety of persons employed within or at
53 potential or existing oil or gas production fields within
54 this state, to improve drilling and production methods
55 and to provide for the more efficient protection and
56 preservation of oil and gas-bearing rock strata and
57 property used in connection therewith;

58 (11) Perform any and all acts necessary to carry out
59 and implement the state requirements established by 92
60 Statutes at Large 3352, et seq., the "Natural Gas Policy
61 Act of 1978," which are to be performed by a designated
62 state jurisdictional agency regarding determinations
63 that wells within the state qualify for a maximum
64 lawful price under certain categories of natural gas as
65 set forth by the provisions of the said "Natural Gas
66 Policy Act of 1978";

67 (12) Collect a filing and processing fee of forty dollars
68 for each well, for which a determination of qualification
69 to receive a maximum lawful price under the provisions
70 of the "Natural Gas Policy Act of 1978" is sought from
71 the director; all revenues from such fees to be placed in
72 the general revenue fund of the state;

73 (13) Collect a permit fee of two hundred fifty dollars
74 for each permit application filed after the tenth day of
75 June, one thousand nine hundred eighty-three: *Provided,*
76 That no permit application fee shall be required when
77 an application is submitted solely for the plugging or
78 replugging of a well. All application fees required
79 hereunder shall be in addition to any other fees required
80 by the provisions of this article;

81 (14) Perform all other duties which are expressly
82 imposed upon him by the provisions of this chapter, as
83 well as duties assigned to him by the commissioner;

84 (15) Perform all duties as the permit issuing authority
85 for the state in all matters pertaining to the exploration,
86 development, production, storage and recovery of this
87 state's oil and gas in accordance with section thirteen,
88 article one, chapter twenty-two of this code;

89 (16) Adopt rules and regulations in accordance with
90 section thirteen, article one, chapter twenty-two of this

91 code with respect to the issuance, denial, retention,
92 suspension or revocation of permits, authorizations and
93 requirements of this chapter, which rules and regula-
94 tions shall assure that the regulations, permits and
95 authorizations issued by the director are adequate to
96 satisfy the purposes of this chapter and chapter twenty-
97 two of this code particularly with respect to the
98 consolidation of the various state and federal programs
99 which place permitting requirements on the explora-
100 tion, development, production, storage and recovery of
101 this state's oil and gas: *Provided*, That notwithstanding
102 any provisions of this chapter or chapter twenty-two of
103 this code to the contrary, the water resources board shall
104 have the sole authority pursuant to section three-a,
105 article five-a, chapter twenty of this code to promulgate
106 rules and regulations setting standards of water quality
107 applicable to waters of the state;

108 (17) Perform such acts as may be necessary or
109 appropriate to secure to this state the benefits of federal
110 legislation establishing programs relating to the
111 exploration, development, production, storage and
112 recovery of this state's oil and gas, which programs are
113 assumable by the state.

114 (d) The director shall have authority to visit and
115 inspect any well or well site and any other oil or gas
116 facility in this state and may call for the assistance of
117 any oil and gas inspector or inspectors or supervising
118 inspector whenever such assistance is necessary in the
119 inspection of any such well or well site or any other oil
120 or gas facility. Similarly, all oil and gas inspectors and
121 the supervising inspector shall have authority to visit
122 and inspect any well or well site and any other oil or
123 gas facility in this state. Any well operator, coal
124 operator operating coal seams beneath the tract of land,
125 or the coal seam owner or lessee, if any, if said owner
126 or lessee is not yet operating said coal seams beneath
127 said tract of land may request the director to have an
128 immediate inspection made. The operator or owner of
129 every well or well site or any other oil or gas facility
130 shall cooperate with the director, all oil and gas

131 inspectors and the supervising inspector in making
132 inspections or obtaining information.

133 (e) Oil and gas inspectors shall devote their full time
134 and undivided attention to the performance of their
135 duties, and they shall be responsible for the inspection
136 of all wells or well sites or other oil or gas facilities in
137 their respective districts as often as may be required in
138 the performance of their duties.

139 (f) All records of the division shall be open to the
140 public.

§22B-1-26. Performance bonds; corporate surety or other security.

1 (a) No permit shall be issued pursuant to this article
2 unless a bond as described in subsection (d) of this
3 section which is required for a particular activity by this
4 article is or has been furnished as provided in this
5 section.

6 (b) A separate bond as described in subsection (d) of
7 this section may be furnished for a particular oil or gas
8 well, or for a particular well for the introduction of
9 liquids for the purposes provided in section twenty-five
10 of this article. A separate bond as described in subsec-
11 tion (d) of this section shall be furnished for each well
12 drilled or converted for the introduction of liquids for
13 the disposal of pollutants or the effluent therefrom.
14 Every such bond shall be in the sum of ten thousand
15 dollars, payable to the state of West Virginia, condi-
16 tioned on full compliance with all laws, rules and
17 regulations relating to the drilling, redrilling, deepening,
18 casing and stimulating of oil and gas wells (or, if
19 applicable, with all laws, rules and regulations relating
20 to drilling or converting wells for the introduction of
21 liquids for the purposes provided for in section twenty-
22 five of this article or for the introduction of liquids for
23 the disposal of pollutants or the effluent therefrom) and
24 to the plugging, abandonment and reclamation of wells
25 and for furnishing such reports and information as may
26 be required by the director.

27 (c) When an operator makes or has made application
28 for permits to drill or stimulate a number of oil and gas

29 wells or to drill or convert a number of wells for the
30 introduction of liquids for the purposes provided in
31 section twenty-five of this article, the operator may in
32 lieu of furnishing a separate bond furnish a blanket
33 bond in the sum of fifty thousand dollars, payable to the
34 state of West Virginia, and conditioned as aforesaid in
35 subsection (b) of this section.

36 (d) The form of the bond required by this article shall
37 be approved by the director and may include, at the
38 option of the operator, surety bonding, collateral
39 bonding (including cash and securities) letters of credit,
40 establishment of an escrow account, self-bonding or a
41 combination of these methods. If collateral bonding is
42 used, the operator may elect to deposit cash, or collateral
43 securities or certificates as follows: Bonds of the United
44 States or its possessions, of the federal land bank, or the
45 homeowners' loan corporation; full faith and credit
46 general obligation bonds of the state of West Virginia,
47 or other states, and of any county, district or municipal-
48 ity of the State of West Virginia or other states; or
49 certificates of deposit in a bank in this state, which
50 certificates shall be in favor of the division. The cash
51 deposit or market value of such securities or certificates
52 shall be equal to or greater than the amount of the bond.
53 The director shall, upon receipt of any such deposit of
54 cash, securities or certificates, promptly place the same
55 with the treasurer of the state of West Virginia whose
56 duty it shall be to receive and hold the same in the name
57 of the state in trust for the purpose of which the deposit
58 is made when the permit is issued. The operator shall
59 be entitled to all interest and income earned on the
60 collateral securities filed by such operator. The operator
61 making the deposit shall be entitled from time to time
62 to receive from the state treasurer, upon the written
63 approval of the director, the whole or any portion of any
64 cash, securities or certificates so deposited, upon
65 depositing with him in lieu thereof, cash or other
66 securities or certificates of the classes herein specified
67 having value equal to or greater than the amount of the
68 bond.

69 (e) When an operator has furnished a separate bond

70 from a corporate bonding or surety company to drill,
71 fracture or stimulate an oil or gas well and the well
72 produces oil or gas or both, its operator may deposit
73 with the director cash from the sale of the oil or gas or
74 both until the total deposited is ten thousand dollars.
75 When the sum of the cash deposited is ten thousand
76 dollars, the separate bond for the well shall be released
77 by the director. Upon receipt of such cash, the director
78 shall immediately deliver the same to the treasurer of
79 the state of West Virginia. The treasurer shall hold such
80 cash in the name of the state in trust for the purpose
81 for which the bond was furnished and the deposit was
82 made. The operator shall be entitled to all interest and
83 income which may be earned on the cash deposited so
84 long as the operator is in full compliance with all laws,
85 rules and regulations relating to the drilling, re-drilling,
86 deepening, casing, plugging, abandonment and reclama-
87 tion of the well for which the cash was deposited and
88 so long as he has furnished all reports and information
89 as may be required by the director. If the cash realized
90 from the sale of oil or gas or both from the well is not
91 sufficient for the operator to deposit with the director
92 the sum of ten thousand dollars within one year of the
93 day the well started producing, the corporate or surety
94 company which issued the bond on the well may notify
95 the operator and the director of its intent to terminate
96 its liability under its bond. The operator then shall have
97 thirty days to furnish a new bond from a corporate
98 bonding or surety company or collateral securities or
99 other forms of security, as provided in the next
100 preceding paragraph of this section with the director.
101 If a new bond or collateral securities or other forms of
102 security are furnished by the operator, the liability of
103 the corporate bonding or surety company under the
104 original bond shall terminate as to any acts and
105 operations of the operator occurring after the effective
106 date of the new bond or the date the collateral securities
107 or other forms of security are accepted by the treasurer
108 of the state of West Virginia. If the operator does not
109 furnish a new bond or collateral securities or other
110 forms of security, as provided in the next preceding
111 paragraph of this section, with the director, he shall

112 immediately plug, fill and reclaim the well in accor-
113 dance with all of the provisions of law, rules and
114 regulations applicable thereto. In such case, the corpo-
115 rate or surety company which issued the original bond
116 shall be liable for any plugging, filling or reclamation
117 not performed in accordance with such laws, rules and
118 regulations.

119 (f) Any separate bond furnished for a particular well
120 prior to the effective date of this chapter shall continue
121 to be valid for all work on the well permitting prior to
122 the effective date of this chapter; but no permit shall
123 hereafter be issued on such a particular well without a
124 bond complying with the provisions of this section. Any
125 blanket bond furnished prior to the effective date of this
126 chapter shall be replaced with a new blanket bond
127 conforming to the requirements of this section, at which
128 time the prior bond shall be discharged by operation of
129 law; and if the director determines that any operator has
130 not furnished a new blanket bond, the director shall
131 notify the operator by certified mail, return receipt
132 requested, of the requirement for a new blanket bond;
133 and failure to submit a new blanket bond within sixty
134 days after receipt of the notice from the director shall
135 work a forfeiture under subsection (i) of this section of
136 the blanket bond furnished prior to the effective date of
137 this chapter.

138 (g) Any such bond shall remain in force until released
139 by the director and the director shall release the same
140 when he is satisfied the conditions thereof have been
141 fully performed. Upon the release of any such bond, any
142 cash or collateral securities deposited shall be returned
143 by the director to the operator who deposited same.

144 (h) Whenever the right to operate a well is assigned
145 or otherwise transferred, the assignor or transferor shall
146 notify the department of the name and address of the
147 assignee or transferee by certified mail, return receipt
148 requested, not later than five days after the date of the
149 assignment or transfer. No assignment or transfer by
150 the owner shall relieve the assignor or transferor of the
151 obligations and liabilities unless and until the assignee
152 or transferee files with the department the well name

153 and the permit number of the subject well, the county
154 and district in which the subject well is located, the
155 names and addresses of the assignor or transferor, and
156 assignee or transferee, a copy of the instrument of
157 assignment or transfer accompanied by the applicable
158 bond, cash, collateral security or other forms of security,
159 described in section twelve, fourteen, twenty-three or
160 twenty-six of this article, and the name and address of
161 the assignee's or transferee's designated agent if
162 assignee or transferee would be required to designate
163 such an agent under section six of this article, if
164 assignee or transferee were an applicant for a permit
165 under said section six. Every well operator required to
166 designate an agent under this section shall within five
167 days after the termination of such designation notify the
168 department of such termination and designate a new
169 agent.

170 Upon compliance with the requirements of this section
171 by assignor or transferor and assignee or transferee, the
172 director shall release assignor or transferor from all
173 duties and requirements of this article, and the deputy
174 director shall give written notice of release unto
175 assignor or transferor of any bond and return unto
176 assignor or transferor any cash or collateral securities
177 deposited pursuant to section twelve, fourteen, twenty-
178 three or twenty-six of this article.

179 (i) If any of the requirements of this article or rules
180 and regulations promulgated pursuant thereto or the
181 orders of the director have not been complied with
182 within the time limit set by the violation notice as
183 defined in sections three, four and five of this article,
184 the performance bond shall then be forfeited.

185 (j) When any bond is forfeited pursuant to the
186 provisions of this article or rules and regulations
187 promulgated pursuant thereto, the director shall give
188 notice to the attorney general who shall collect the
189 forfeiture without delay.

190 (k) All forfeitures shall be deposited in the treasury
191 of the state of West Virginia in the special reclamation
192 fund as defined in section twenty-nine of this article.

CHAPTER 98

(Com. Sub. for S. B. 526—By Senator Tonkovich, Mr. President)

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

AN ACT to amend and reenact section three, article nine-a, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public notice of meetings; specifying the manner and time by which notice must be filed with the secretary of state; and providing for judicial invalidation for noncompliance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.

§6-9A-3. Proceedings to be open; public notice of meetings.

1 Except as expressly and specifically otherwise pro-
2 vided by law, whether heretofore or hereinafter enacted,
3 and except as provided in section four of this article, all
4 meetings of any governing body shall be open to the
5 public. Any governing body may make and enforce
6 reasonable rules and regulations for attendance and
7 presentation at any meeting where there is not room
8 enough for all members of the public who wish to
9 attend, and this article shall not be construed to prohibit
10 the removal from a meeting of any member of the public
11 who is disrupting the meeting to the extent that orderly
12 conduct of the meeting is compromised: *Provided*, That
13 persons who desire to address the governing body shall
14 not be required to register to address said body more
15 than fifteen minutes prior to time the scheduled meeting
16 is to commence.

17 Each governing body shall promulgate rules by which
18 the time and place of all regularly scheduled meetings
19 and the time, place and purpose of all special meetings

20 are made available, in advance, to the public and news
21 media, except in the event of an emergency requiring
22 immediate official action.

23 Each governing body of the executive branch of the
24 state shall file a notice of any meeting with the secretary
25 of state for publication in the state register. Each notice
26 shall state the time, place and purpose of the meeting.
27 Each notice shall be filed in a manner to allow each
28 notice to appear in the state register at least five days
29 prior to the date of the meeting.

30 In the event of an emergency requiring immediate
31 official action, any governing body of the executive
32 branch of the state may file an emergency meeting
33 notice at any time prior to the meeting. The emergency
34 meeting notice shall state the time, place and purpose
35 of the meeting and the facts and circumstances of the
36 emergency.

37 Upon petition by any adversely affected party any
38 court of competent jurisdiction may invalidate any
39 action taken at any meeting for which notice did not
40 comply with the requirements of this section.

CHAPTER 99

(Com. Sub. for S. B. 189—By Senators Tonkovich, Mr. President,
by request, and Harman)

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

AN ACT to amend and reenact section fifteen, article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to contracts for operation of commissaries, restaurants and other establishments; limiting contracts to ten years' duration; renewal at option of the commissioner; limitation of contract by commissioner; contracts for development of revenue producing facilities within the state parks and recreational facilities; level of investment of contracts; term of investment contracts; reservation of option to purchase, purchase price determination; requiring that contracts for a term of ten years or longer shall be subject to public hearing,

prescribing the location of such hearing and requiring notice thereof; and providing for certain findings to be made by the commissioner of commerce.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-15. Contracts for operation of commissaries, restaurants, recreational facilities and other establishments limited to ten years' duration; renewal at option of commissioner; termination of contract by the commissioner; contracts for development of revenue producing facilities within the state parks and recreational facilities; level of investment of contracts; term of investment contract; reservation of option to purchase; purchase price determination.

1 (a) When it is deemed necessary by the commissioner
2 to enter into a contract with a person, firm or corpora-
3 tion for the operation of a commissary, restaurant,
4 recreational facility or other such establishment within
5 the state parks and public recreation system, such
6 contract shall be for a duration not to exceed ten years,
7 but a contract so made may provide for an option to
8 renew at the commissioner's discretion for an additional
9 term or terms not to exceed ten years at the time of
10 renewal.

11 Any contract entered into by the commissioner shall
12 provide an obligation upon the part of the operator that
13 he maintain a level of performance satisfactory to the
14 commissioner, and shall further provide that any such
15 contract may be terminated by the commissioner in the
16 event he determines that such performance is unsatis-
17 factory and has given the operator reasonable notice
18 thereof.

19 (b) When it is deemed necessary by the commissioner
20 to enter into a contract with a person, firm or corpora-
21 tion for the development of revenue producing facilities

22 within the state parks and public recreation system for
23 a period of more than ten years, such contract shall be
24 at least a one million dollar level of investment for such
25 revenue producing facilities. The term of the investment
26 contract may be up to twenty-five years of duration at
27 the determination of the commissioner and based upon
28 the amount of the investment and the achievement of the
29 environmental, recreational and cultural goals of the
30 state park or recreation areas system of this state.

31 Any investment contract entered into by the commis-
32 sioner shall reserve an option to purchase the investment
33 at any time during the term of the contract upon
34 reasonable notice to the investor. The option to purchase
35 shall provide that the purchase price of the revenue
36 producing facilities shall be determined by the average
37 of three appraisals by three certified members of
38 appraisal institutes.

39 (c) No contract of a term greater than ten years shall
40 be entered into by the commissioner until a public
41 hearing is held in the vicinity of the location of the
42 proposed facility with at least two weeks notice of such
43 hearing by Class I publication pursuant to section two,
44 article three, chapter fifty-nine of this code. At such
45 hearing the commissioner shall present in writing the
46 following findings and supporting statements therefor:

47 (i) That the proposed development will not deprive
48 users of the state park or recreational area of existing
49 recreational facilities in any significant fashion;

50 (ii) That the proposed development will not have
51 substantial negative impact on the environmental,
52 scenic or cultural qualities of the said park or area; and

53 (iii) That the proposed development, considered as a
54 whole, is of benefit to the recreational goals of the state.

CHAPTER 100

(Com. Sub. for S. B. 548—By Senator Tucker)

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

AN ACT to amend and reenact sections two, four, five, seven
and eight, article fourteen, chapter forty-seven of the

code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to preneed burial contracts; setting forth definitions; redefining the term "department" to mean the office of the attorney general instead of the department of labor; requiring licensure; revising terminology consistent with definition changes; providing for the disposition of proceeds; procedure for administration; promulgation of rules; removing certain fidelity bond requirements; prescribing the use of income on trust accounts; enforcement of contracts; limitations; providing for the appointment of a board of trustees; fidelity bond required; duties of trustee; permitting an irrevocable contract in all instances and removing public assistance requirement therefor; contract approved by department; fees; use of the moneys collected as fees; providing for the performance, transfer and assignment of such contracts; credit life insurance; and assumption of obligations by successor to contract seller.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. PRENEED BURIAL CONTRACTS.

§47-14-2. Definitions.

§47-14-4. Agents and employees; licenses required; fee to go to department.

§47-14-5. Disposition of proceeds; trusts; procedure for administration, department to promulgate rules and regulations.

§47-14-7. Income on trust accounts.

§47-14-8. Limitations on enforcement of contract; appointment and removal of trustees; standards for administration of trusts; contracts may be irrevocable; "Preneed Guarantee Fund" established; assignment of contract allowed; credit life insurance allowed; successor in interest defined.

§47-14-2. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

3 (1) "Burial goods" means all merchandise supplied in
4 regard to burial, or entombment in a mausoleum or

5 inurnment in a columbarium, but does not include those
6 services actually performed by a cemetery acting only
7 as such, or the sale by any person of cemetery lots, land
8 or interests therein, services incidental thereto, or the
9 sale by any person of markers, memorials, monuments,
10 equipment, crypts, urns, burial vaults or vaults con-
11 structed or to be constructed in a mausoleum or
12 columbarium.

13 (2) "Contract beneficiary" means any person specified
14 or implied in a preneed funeral contract, upon whose
15 death funeral services, funeral goods or burial goods
16 shall be performed, provided or delivered.

17 (3) "Contract buyer" means any person, whether or
18 not a contract beneficiary, who purchases goods or
19 services pursuant to a preneed funeral contract but shall
20 not include any person other than a natural person.

21 (4) "Contract seller" or "seller" means a person, his
22 agent or his employee, who sells, makes available or
23 provides preneed funeral contracts.

24 (5) "Department" means the office of the attorney
25 general.

26 (6) "Funds" means moneys or other consideration
27 received pursuant to the sale of a preneed funeral
28 contract, including interest accrued or earned thereon.

29 (7) "Funeral goods" means those items of merchandise
30 sold or offered for sale directly to the public by any
31 person which will be used in connection with a funeral
32 or alternative for final disposition of human remains,
33 but does not include those services actually performed
34 by a cemetery acting only as such, or the sale by the
35 cemetery of cemetery lots, land or interest therein,
36 services incidental thereto, or the sale by any person of
37 markers, memorials, monuments, equipment, crypts,
38 urns, burial vaults or vaults constructed or to be
39 constructed in a mausoleum or columbarium.

40 (8) "Funeral services" means those services usually
41 performed by a funeral service licensee, including, but
42 not limited to, care and preparation of human remains

43 and coordinating rites and ceremonies in connection
44 with the disposition of human remains carried out at the
45 request of any individual responsible for funeral and
46 disposition arrangements.

47 (9) "Person" means a natural person, partnership,
48 firm, association or corporation, including any agent or
49 employee thereof residing in or doing business in this
50 state who is engaged in the selling of, making available
51 of or providing of "preneed funeral contracts," defined
52 herein, or is the recipient of funds paid for such purpose.

53 (10) "Person who makes a preneed funeral contract
54 available" means a person who, while not directly selling
55 the contents of a preneed funeral contract to the public
56 through his efforts, makes such contracts available to
57 the public but shall not include manufacturers of
58 funeral goods or burial goods.

59 (11) "Personal residence" means any residential
60 building in which one temporarily or permanently
61 maintains his abode including, but not limited to, hotels,
62 motels, apartments, nursing homes, convalescent homes,
63 homes for the aged and public and private institutions.

64 (12) "Preneed funeral contract" means any contract,
65 agreement, mutual understanding, series or combina-
66 tion of contracts, agreements and mutual understand-
67 ings, other than a contract of insurance, under which,
68 for a specified consideration paid in advance of death
69 in a lump sum or by installments, a person promises to
70 furnish or make available or provide funeral services,
71 funeral goods or burial goods for use at a time deter-
72 minable by the death of the "contract beneficiary" who
73 is either named or implied.

74 (13) "Provider" means a person who, though not a
75 party to a preneed funeral contract does, through his
76 efforts, make the services or goods referred to in such
77 a contract available to the public pursuant to such a
78 contract.

79 (14) "Trustee" means any natural person, partnership
80 or corporation, including any bank, trust company,
81 savings and loan association or credit union, which

82 receives money pursuant to any agreement or contract
83 made pursuant to the provisions of this article.

§47-14-4. Agents and employees; licenses required; fee to go to department.

1 No agent or employee of a contract seller may sell
2 preneed funeral contracts in this state without first
3 obtaining from the department a license for such
4 purpose. The fee for such license and the annual renewal
5 thereof shall be twenty-five dollars. These fees shall be
6 payable to the "Preneed Burial Contract Regulation
7 Fund" established by section three of this article. The
8 department shall not issue such license without requir-
9 ing an applicant for the license, or if the applicant is
10 a corporation, its individual agents, to provide proof to
11 warrant its issuance by presenting with the application
12 affidavits from his employer stating that, to the
13 employer's best information, knowledge and belief the
14 applicant merits a license. The acts of the agent shall
15 be considered acts of the employer. The department may
16 require the applicant to pass a written examination to
17 ascertain if the applicant has sufficient knowledge of the
18 industry and the provisions of this article to properly
19 carry on the business covered by this article.

§47-14-5. Disposition of proceeds; trusts; procedure for administration, department to promulgate rules and regulations.

1 (a) All sums paid or collected on such contracts
2 entered into after the effective date of this article shall
3 be handled in the following manner:

4 (1) The contract seller or other person collecting the
5 funds may retain for his own use and benefits and for
6 the purpose of covering his selling expenses, servicing
7 costs and general overhead, an amount not to exceed ten
8 percent of the total amount agreed to be paid by the
9 contract buyer as reflected in the preneed funeral
10 contract. Such ten percent or other amount is exempt
11 from the trust and refunding provisions of this article;

12 (2) All of the funds collected under the contract, less
13 the amount authorized to be deducted under subdivision

14 (1) of this subsection, shall be deposited under the
15 provisions of subdivision (3) hereof;

16 (3) Unless otherwise specifically exempt under this
17 article, all funds paid to or collected by any person from
18 a preneed funeral contract shall, within thirty days after
19 receipt thereof by such a person, be deposited in this
20 state (i) in the name of a trustee who is a contract seller,
21 provider or person making the preneed funeral contract
22 available, in a state or federally chartered and insured
23 bank, savings institution, building and loan institution
24 located in this state or in a state or federally chartered
25 credit union located in this state, or (ii) under the terms
26 of a trust instrument entered into with a national or
27 state bank having trust powers or a trust company
28 located in this state.

29 (b) The funds to be deposited from more than one
30 preneed funeral contract may at the option of the
31 recipient thereof or the certificate of authority holder,
32 be placed in a common or commingled trust fund in this
33 state under a single trust instrument.

34 (c) All deposits shall be placed in an account with a
35 trustee in the name of the contract seller, provider or
36 person making the contract available, as set forth in the
37 contract, to whom the contract buyer makes payment.
38 Records shall be maintained as to each contract showing
39 the amount paid, the amount deposited and the amount
40 invested with respect to any particular buyer's contract.

41 (d) All funds required to be deposited and covered by
42 this article shall remain in this state.

43 (e) All accounts of money deposited in any bank,
44 savings institution, building and loan association or
45 credit union in accordance with the provisions of this
46 article are subject to periodic examination by the
47 department of banking of this state.

48 (f) The department shall promulgate rules and
49 regulations in accordance with chapter twenty-nine-a of
50 this code for the purpose of administering the provisions
51 of this article.

§47-14-7. Income on trust accounts.

1 (a) Whether the payments on a preneed funeral
2 contract are placed in a bank, savings institution,
3 building and loan association, credit union or in a
4 common trust fund as permitted in this article, or are
5 part of a commingled common trust fund as permitted
6 in this article, the income from a contract deposit,
7 except as otherwise provided herein, shall accrue to the
8 individual account until such time as the burial goods,
9 funeral goods and funeral services for the contract
10 beneficiary are required to be delivered and returned
11 by reason of such beneficiary's death.

12 (b) Upon the death of such contract beneficiary, the
13 total amount in the trust account attributable to the
14 contract beneficiary shall be disbursed as follows:

15 (1) If the cost of the goods and services contracted for
16 at the time of such beneficiary's death exceeds the
17 amount paid under the contract, then the provider may
18 have and use the principal and so much of the interest
19 as may be necessary to defray such additional cost over
20 and above the contract cost: *Provided*, That to the extent
21 that the cost of goods and services provided exceeds the
22 principal and interest thereon, the provider shall
23 provide and make available the goods and services
24 contracted for at no additional cost to the contract
25 purchaser or to the heirs or personal representative of
26 the contract beneficiary;

27 (2) To the extent the principal and interest thereon
28 exceed the cost of the goods and services contracted for,
29 then the provider may retain only so much of the
30 principal and interest necessary to defray the total of
31 such cost and the balance shall be returned to the estate
32 of the contract beneficiary or to the contract buyer as
33 may be proper under the provisions of this article or the
34 rules and regulations of the department.

35 (c) The trustee for the trust shall make annual
36 valuations of assets held in trust. No person may
37 withdraw income from the trust, except for the purpose
38 of executing the terms of the contract, disbursing the
39 trust proceeds as provided in this article and paying

40 costs incidental to the trust, including, but not limited
41 to, reasonable trust fees and tax assessments.

**§47-14-8. Limitations on enforcement of contract; ap-
pointment and removal of trustees; standards
for administration of trusts; contracts may be
irrevocable; "Preneed Guarantee Fund"
established; assignment of contract allowed;
credit life insurance allowed; successor in
interest defined.**

1 (a) A contract seller, provider or person making the
2 preneed funeral contract available may not enforce a
3 preneed funeral contract made in violation of this
4 article, but a contract buyer or his heirs or legal
5 representative may recover all amounts paid under his
6 contract and all accrued income on such amount where
7 the contract seller, provider or person making the
8 preneed funeral contract available has violated the
9 provisions of this article as to such contract. The right
10 of such recovery is in addition to the remedy provided
11 for in section twelve of this article.

12 (b) A contract seller, provider or person making the
13 preneed funeral contract available may appoint a board
14 of at least three individual trustees under a trust
15 instrument, if the trustee is other than a chartered state
16 or national bank or trust company under the supervision
17 of the department of banking of this state, to serve as
18 trustees of its trust funds. Each individual trustee shall
19 be a resident of this state and shall hold office subject
20 to the direction of the seller. Not more than one member
21 of the board of trustees of a trust fund may have a
22 proprietary interest in the seller appointing trustees or
23 in any certificate of authority holder who is placing
24 funds in such trust.

25 Individual trustees of a trust fund established under
26 the provisions of this article shall file a fidelity bond
27 with a corporate surety thereon which is licensed to do
28 business in this state with the department in an amount
29 equal to the funds in trust, guaranteeing payment of
30 damages occasioned by breach of the trustees' fiduciary
31 duties. The trustees of one or more trust funds need file
32 only one such bond. The aggregate liability of the surety

33 shall in no case exceed the face amount of the bond. The
34 department or any aggrieved person claiming against
35 any bond required by this section may maintain an
36 action against the trustee and the surety. Individual
37 trustees shall take no action respecting trust funds
38 unless there is on file with the department a bond as
39 required by this section. If the trustees are individuals,
40 the department may suspend the certificate of authority
41 of any contract seller, provider or person making the
42 preneed funeral contract available having trust funds
43 with respect to which there is no bond on file with the
44 department as required by this section.

45 (c) All trustees under the terms of this article are
46 subject to the following investment standards: In
47 acquiring, investing, reinvesting, exchanging, retaining,
48 selling and managing property for the benefit of others,
49 trustees have the responsibilities which customarily
50 attach to such offices and to the type of estates entrusted
51 to their care and shall exercise the judgment and care
52 under the circumstances then prevailing which men of
53 prudence, discretion and intelligence exercise in the
54 management of their own affairs, not in regard to
55 speculation but in regard to the permanent disposition
56 of their funds, considering the probable income as well
57 as the probable safety of their capital.

58 (d) No preneed funeral contract may restrict any
59 contract buyer who may make his or her contract
60 irrevocable in accordance with the laws and regulations
61 of this state.

62 (e) All preneed funeral contracts must be in writing
63 and no contract form may be used without prior
64 approval of the department.

65 (f) Each contract buyer shall pay a fee of five dollars
66 to the contract seller, who in turn will forward such sum
67 to the department within ten days after execution of the
68 preneed funeral contract. The contract shall be recorded
69 in the department. Within ten days after receiving the
70 fee, the department will notify the contract purchaser,
71 by mail, of the recording. The fees shall be placed by
72 the department in an account under the department's
73 control entitled "Preneed Guarantee Fund," and the

74 income thereon shall accrue to the fund. The department
75 may use such income, if necessary in its discretion, to
76 enforce this article.

77 In the event any buyer of any preneed funeral contract
78 is unable to receive the benefits of his contract, or to
79 receive the funds due by reason of his cancellation
80 thereof, such buyer may apply to the department on a
81 form supplied by the department. Upon the finding of
82 the department that said benefits or return of payment
83 is not available to the buyer, the department will cause
84 to be paid to the said buyer from the "Preneed Guarante-
85 tee Fund" the amount actually paid by the buyer under
86 his or her contract. If the seller's liability for default is
87 subsequently proven, any award made by a court of law
88 shall be made payable to the "Preneed Burial Contract
89 Regulation Fund" established in section three of this
90 article.

91 (g) Notwithstanding the provisions of subsection (f),
92 section five of this article, delivery of funeral or burial
93 goods prior to the death of the person for whose benefit
94 they are purchased does not constitute performance or
95 fulfillment, either wholly or in part, of any preneed
96 contract or series of contracts.

97 (h) The contract buyer may, on acceptance in writing
98 by a transferee, transfer the obligations of the seller,
99 provider or person making the preneed funeral contract
100 available to other persons within or without this state.
101 The funds on deposit for the contract on any future
102 payments, if any, by the contract buyer shall then be
103 transferred to and deposited under applicable state law,
104 if any, in the state wherein the contract buyer resides
105 or to a state where the obligations of the provider of the
106 funeral service and goods will be fulfilled.

107 Upon such transfer, the contract buyer and transferee
108 shall, in writing, release the contract seller, provider or
109 person making the preneed funeral contract available
110 and the trusts, as applicable, for any further liability
111 under such contract.

112 Nothing in this article or in any preneed contract may
113 limit the right of a contract buyer to assign such a
114 contract to any person whomsoever except as specifi-

115 cally provided herein and except that if the assignee is
116 a resident of this state or the contract is to be fulfilled
117 by the assignee in this state, the assignee must hold a
118 certificate of authority under this article. If the contract
119 is to be fulfilled in another state, the assignee must in
120 all respects be in compliance with the preneed funeral
121 law of that state, if any.

122 (i) Notwithstanding any other law of this state, a
123 contract seller, provider or person making the preneed
124 funeral contract available may, if requested by the
125 contract buyer where the contract is to be paid in
126 installments, provide for the sale of credit life insurance
127 on the life of the contract beneficiary in order to have
128 the funds necessary to make payment in full under the
129 contract if the beneficiary should die prior to completing
130 all the payments due. The seller shall disclose all costs
131 of such insurance in clear language and shall inquire of
132 the buyer whether he understands the terms of the
133 insurance contract and is aware of the total cost of the
134 insurance.

135 (j) In the event any certificate of authority holder or
136 anyone in violation of the article who has outstanding
137 preneed funeral contracts and is not the current holder
138 of a certificate of authority sells its business, through the
139 sale of assets or stock, which is involved in the fulfil-
140 lment of obligations under preneed funeral contracts,
141 the buyer of such business is a "successor in interest"
142 and is covered not only by this article but shall assume
143 the obligations of seller under seller's outstanding
144 preneed funeral contracts regardless of whether seller
145 made known to buyer the existence of such contract or
146 contracts.

CHAPTER 101

(Com. Sub. for S. B. 166—By Senators Tonkovich, Mr. President,
by request, and Harman)

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

AN ACT to amend and reenact sections ten, eleven and twelve,
article three, chapter thirty of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, relating to licenses to practice medicine and surgery or podiatry; examination and licensure fees; elimination of educational training permits, temporary permits and licensure by diplomate certificate from an American specialty board; additional requirements for graduate clinical training for physicians.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

§30-3-11. Endorsement of licenses to practice medicine and surgery and podiatry; fees; temporary license.

§30-3-12. Biennial renewal of license to practice medicine and surgery and podiatry; fee; inactive license.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

1 (a) The board shall issue a license to practice medi-
2 cine and surgery or to practice podiatry to any individ-
3 ual who is qualified to do so in accordance with the
4 provisions of this article.

5 (b) For an individual to be licensed to practice
6 medicine and surgery in this state, he or she must meet
7 the following requirements:

8 (1) He or she shall submit an application to the board
9 on a form provided by the board and remit to the board
10 a reasonable examination fee, the amount of such
11 reasonable fee to be set by the board. The application
12 must, as a minimum, require a sworn and notarized
13 statement that the applicant is of good moral character
14 and that he or she is physically and mentally capable
15 of engaging in the practice of medicine and surgery;

16 (2) He or she must provide evidence of graduation and
17 receipt of the degree of doctor of medicine or its
18 equivalent from a school of medicine, which is approved

19 by the liaison committee on medical education or by the
20 board;

21 (3) He or she must submit evidence to the board of
22 having completed a minimum of one year of graduate
23 clinical training in a program approved by the accred-
24 itation council for graduate medical education; and

25 (4) He or she must pass an examination approved by
26 the board, which examination can be related to a
27 national standard. The examination shall be in the
28 English language and be designed to ascertain an
29 applicant's fitness to practice medicine and surgery. The
30 board shall before the date of examination determine
31 what will constitute a passing score: *Provided*, That the
32 said board, or a majority of them, may accept in lieu
33 of an examination of applicants, the certificate of the
34 national board of medical examiners. If an applicant
35 fails to pass the examination on two occasions, he or she
36 shall successfully complete a course of study or training,
37 as approved by the board, designed to improve his or
38 her ability to engage in the practice of medicine and
39 surgery, before being eligible for reexamination.

40 (c) In addition to the requirements of subsection (b)
41 hereof, any individual who has received the degree of
42 doctor of medicine or its equivalent from a school of
43 medicine located outside of the United States, the
44 Commonwealth of Puerto Rico and Canada, to be
45 licensed to practice medicine in this state, must also
46 meet the following additional requirements and
47 limitations:

48 (1) He or she must be able to demonstrate to the
49 satisfaction of the board his or her ability to commun-
50 icate in the English language;

51 (2) Before taking a licensure examination, he or she
52 must have fulfilled the requirements of the educational
53 commission for foreign medical graduates for certifica-
54 tion, or he or she must provide evidence of receipt of a
55 passing score on the examination of the educational
56 commission for foreign medical graduates; and

57 (3) He or she must submit evidence to the board of
58 having completed a minimum of two years of graduate

59 clinical training in a program approved by the accred-
60 itation council for graduate medical education.

61 (d) For an individual to be licensed to practice
62 podiatry in this state, he or she must meet the following
63 requirements:

64 (1) He or she shall submit an application to the board
65 on a form provided by the board and remit to the board
66 a reasonable examination fee, the amount of such
67 reasonable fee to be set by the board. The application
68 must, as a minimum, require a sworn and notarized
69 statement that the applicant is of good moral character
70 and that he or she is physically and mentally capable
71 of engaging in the practice of podiatric medicine;

72 (2) He or she must provide evidence of graduation and
73 receipt of the degree of doctor of podiatric medicine and
74 its equivalent from a school of podiatric medicine which
75 is approved by the council of podiatry education or by
76 the board; and

77 (3) He or she must pass an examination approved by
78 the board, which examination can be related to a
79 national standard. The examination shall be in the
80 English language and be designed to ascertain an
81 applicant's fitness to practice podiatric medicine. The
82 board shall before the date of examination determine
83 what will constitute a passing score. If an applicant fails
84 to pass the examination on two occasions, he or she shall
85 successfully complete a course of study or training, as
86 approved by the board, designed to improve his or her
87 ability to engage in the practice of podiatric medicine,
88 before being eligible for reexamination.

89 (e) All licenses to practice medicine and surgery
90 granted prior to July first, one thousand nine hundred
91 eighty-seven, and valid on that date, shall continue in
92 full effect for such term and under such conditions as
93 provided by law at the time of the granting of the
94 license: *Provided*, That the provisions of subsection (d)
95 of this section shall not apply to any person legally
96 entitled to practice chiropody or podiatry in this state
97 prior to the eleventh day of June, one thousand nine
98 hundred sixty-five: *Provided, however*, That all persons

99 licensed to practice chiropody prior to the eleventh day
100 of June, one thousand nine hundred sixty-five, shall be
101 permitted to use the term "chiropody-podiatry" and
102 shall have the rights, privileges and responsibilities of
103 a podiatrist set out in this article.

**§30-3-11. Endorsement of licenses to practice medicine
and surgery and podiatry; fees; temporary
license.**

1 (a) Any person seeking to be licensed to practice
2 medicine and surgery in this state who holds a valid
3 license to practice medicine and surgery attained under
4 requirements substantially similar to the requirement of
5 section ten of this article from another state, the District
6 of Columbia, the Commonwealth of Puerto Rico or
7 Canada, and any person seeking to be licensed to
8 practice podiatry in this state who holds a valid license
9 to practice podiatry attained under requirements
10 substantially similar to the requirements in section ten
11 of this article from another state, territory or foreign
12 country or the District of Columbia shall be issued a
13 license to practice medicine and surgery or podiatry, as
14 appropriate, in this state if he or she meets the following
15 requirements:

16 (1) He or she must submit an application to the board
17 on forms provided by the board and remit a reasonable
18 licensure fee, the amount of such reasonable fee to be
19 set by the board. The application must, as a minimum,
20 require a statement that the applicant is a licensed
21 physician or podiatrist in good standing and indicate
22 whether any medical disciplinary action has been taken
23 against him or her in the past; and

24 (2) He or she must demonstrate to the satisfaction of
25 the board that he or she has the requisite qualifications
26 to provide the same standard of care as a physician or
27 podiatrist initially licensed in this state.

28 (b) The board may investigate the applicant and may
29 request a personal interview to review the applicant's
30 qualifications and professional credentials.

31 (c) The board may, at its discretion, grant a tempor-
32 ary license to an individual applying for licensure under
33 this section if the individual meets the requirements of

34 subdivision (1), subsection (a) of this section. Such
35 temporary license shall only be valid until the board is
36 able to meet and consider the endorsement request. The
37 board may fix and collect a reasonable fee for a
38 temporary license, the amount of such reasonable fee to
39 be set by the board.

**§30-3-12. Biennial renewal of license to practice medicine
and surgery and podiatry; fee; inactive
license.**

1 (a) A license to practice medicine and surgery or
2 podiatry in this state is valid for a term of two years
3 and shall be renewed upon a receipt of a reasonable fee,
4 as set by the board, and submission of an application on
5 forms provided by the board.

6 (b) The board may renew, on an inactive basis, the
7 license of a physician or podiatrist who is currently
8 licensed to practice medicine and surgery or podiatry in,
9 but is not actually practicing, medicine and surgery or
10 podiatry in this state. A physician or podiatrist holding
11 an inactive license shall not practice medicine and
12 surgery or podiatry in this state, but he or she may
13 convert his or her inactive license to an active one upon
14 a request to the board that accounts for his or her period
15 of inactivity to the satisfaction of the board. An inactive
16 license may be obtained upon receipt of a reasonable fee,
17 as set by the board, and submission of an application on
18 forms provided by the board on a biennial basis.

CHAPTER 102

(Com. Sub. for H. B. 2321—By Delegate J. Martin)

[Passed February 26, 1987; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article thirteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the qualifications of applicants for registration as a professional engineer; reciprocity; application; and fees

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. ENGINEERS.

§30-13-6. Qualifications of applicants; reciprocity; applications; fees.

- 1 (a) To be eligible for registration as a professional
- 2 engineer, the applicant must:
 - 3 (1) Be at least eighteen years of age;
 - 4 (2) Be of good moral character;
 - 5 (3) Not have been convicted of a felony in any court
 - 6 in this state or any federal court in this or any other
 - 7 state within ten years preceding the date of application
 - 8 for registration, which conviction remains unreversed;
 - 9 and not have been convicted of a felony in any court in
 - 10 this state or any federal court in this or any other state
 - 11 at any time if the offense for which he was convicted
 - 12 related to the practice of professional engineering,
 - 13 which conviction remains unreversed;
 - 14 (4) Either (i) be a graduate of a school or college in
 - 15 an engineering curriculum approved by the board and
 - 16 have a specific record of an additional four years or
 - 17 more of experience in engineering work of a character
 - 18 satisfactory to the board indicating that the applicant
 - 19 is competent to practice engineering; or (ii) be a
 - 20 graduate of a school or college in a science curriculum
 - 21 approved by the board and have a specific record of an
 - 22 additional six years or more of experience in engineer-
 - 23 ing work of a character satisfactory to the board
 - 24 indicating that the applicant is competent to practice
 - 25 engineering; or (iii) have a record of at least ten years
 - 26 of education and experience in engineering which in the
 - 27 opinion of the board is substantially equivalent to (i) or
 - 28 (ii) as set forth hereinabove; and
 - 29 (5) Have passed the examination prescribed and
 - 30 administered by the board in accordance with the
 - 31 provisions of this article.
 - 32 (b) The board may issue a certificate of registration

33 as a professional engineer to any person who holds an
34 unrevoked license or a certificate of registration issued
35 to him by any state, territory, or possession of the United
36 States: *Provided*, That the applicant's qualifications are
37 in the opinion of the board equal to or greater than the
38 requirements of this article and the rules and regula-
39 tions established by the board.

40 (c) Any applicant for registration under the provi-
41 sions of subsection (a) or (b) of this section shall submit
42 an application therefor at such time, in such manner,
43 on such forms and containing such information as the
44 board may from time to time by reasonable rule and
45 regulation prescribe. The board shall prescribe a
46 reasonable fee for the registration of professional
47 engineers which shall not exceed one hundred dollars,
48 or such other reasonable amount in excess of one
49 hundred dollars as the board may establish by legisla-
50 tive rule promulgated in accordance with the provisions
51 of chapter twenty-nine-a of this code. Of such registra-
52 tion fee, the board may designate a portion thereof, not
53 to exceed fifty percent of the total registration fee, as
54 an application fee which shall accompany the applica-
55 tion at the time of filing. Should the board deny the
56 issuance of a certificate, the portion of the registration
57 fee designated as an initial fee shall be retained by the
58 board. Upon the issuance of a certificate, the remaining
59 portion of the registration fee shall be paid in such form
60 and at such times as the board shall direct. Applicants
61 failing any portion of the examination will, upon
62 reapplication, be required to pay the fees required by
63 this subsection for each subsequent examination period
64 for which he or she may appear, in the same manner
65 as original applicants.

CHAPTER 103

(H. B. 2778—By Delegate Bradley)

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

AN ACT to amend and reenact sections three, four, five, six, eight, nine-a and ten, article fourteen, chapter thirty of

the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section eight-a; and to amend and reenact sections two and three, article fourteen-a of said chapter, all relating to the state board of osteopathy, its members, applicants for examination, training of interns, license fees, temporary permits, resident physicians, fees for osteopathic medical corporations, biennial renewal of osteopathic assistant certification, and fee.

Be it enacted by the Legislature of West Virginia:

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

Article

14. Osteopathic Physicians and Surgeons.

14A. Assistants to Osteopathic Physicians and Surgeons.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-3. Board of osteopathy.

§30-14-4. Application for examination.

§30-14-5. Examinations; certificate of license; certificate of authorization for osteopathic medical corporation; certification and establishment of standards for employment of assistants; fee.

§30-14-6. Issuance of license without examination; fee.

§30-14-8. Temporary permits.

§30-14-8a. Resident physicians.

§30-14-9a. Osteopathic medical corporations—Application for registration; fee; notice to secretary of state of issuance of certificate; action by secretary of state.

§30-14-10. Annual renewal of license; fee; refresher training a prerequisite; effect of failure to renew; reinstatement.

§30-14-3. Board of osteopathy.

1 There shall be a board of osteopathy, known as the
 2 “West Virginia Board of Osteopathy” composed of five
 3 members. Three of the members shall be licensed
 4 osteopathic physicians and surgeons. These members
 5 shall be appointed by the governor by and with the

6 consent of the Senate from a list of six or more names
7 recommended by the West Virginia Osteopathic Society,
8 Incorporated. Each such member of the board shall
9 have been a resident of and engaged in the practice of
10 his profession in this state for a period of at least five
11 years immediately preceding his appointment. The lay
12 members of the board shall be appointed by the
13 governor by and with the consent of the Senate.

14 The members of the board shall be appointed for a
15 term of office of three years. The members of the board
16 in office on the date this article takes effect shall, unless
17 sooner removed, continue to serve until their respective
18 terms expire and until their successors have been
19 appointed and have qualified. On or before the first day
20 of July of each year, the governor shall appoint one
21 member to serve for a term of three years commencing
22 on said first day of July; and any member shall be
23 eligible for reappointment. When a vacancy in the
24 membership of the board occurs for any cause other
25 than the expiration of a term, the governor shall appoint
26 a successor as a member of the board to fill the
27 unexpired portion of the term of office of the member
28 whose office has been vacated.

29 Each member of the board, excluding lay members,
30 shall take, in addition to the oath of office provided for
31 in article IV, section 5 of the constitution of this state,
32 an oath that he has been engaged in the practice of his
33 profession in this state for at least five years imme-
34 diately preceding his appointment.

§30-14-4. Application for examination.

1 Each applicant for examination by the board, with the
2 exception of assistants to osteopathic physicians and
3 surgeons, as hereinafter provided, shall submit an
4 application therefor on forms prepared and furnished by
5 the board, accompanied by evidence verified by oath and
6 satisfactory to the board, establishing that the applicant
7 has satisfied the following requirements: (a) That the
8 applicant is eighteen years of age or over; (b) that the
9 applicant is of good moral character; (c) that the
10 applicant has graduated from an approved osteopathic

11 college; (d) that the applicant has submitted a letter of
12 verification from an AOA approved hospital stating that
13 he has been approved for an AOA approved internship
14 or that the applicant is currently in an AOA approved
15 internship, if internship has not already been completed;
16 and (e) that the applicant has paid to the board a fee
17 to be determined by the board that is seventy-five
18 dollars greater than the board's cost of processing the
19 application.

**§30-14-5. Examination; certificate of license; certificate
of authorization for osteopathic medical
corporation; certification and establishment
of standards for employment of assistants;
fee.**

1 The examination for a license to practice medicine
2 and surgery as an osteopathic physician and surgeon
3 shall be written and oral and shall cover all the essential
4 branches of medicine and surgery including anatomy,
5 physiology, chemistry, pharmacology, pathology, public
6 health—preventive medicine, surgery, obstetrics and
7 gynecology, osteopathic medicine, materia medica
8 principles and practice of osteopathy; and this list of
9 subjects may be expanded or regrouped at the discretion
10 of the board.

11 The board shall issue certificates of license to all
12 applicants who shall successfully pass the said exami-
13 nation and shall present evidence showing that they
14 have served an internship in a hospital approved by the
15 AOA for intern training. The board shall also examine
16 the application of any one or more osteopathic physi-
17 cians or surgeons for the formation of an osteopathic
18 medical corporation, filed pursuant to the provisions of
19 section nine-a of this article, and issue a certificate of
20 authorization therefor to any applicant or applicants
21 legally entitled to receive the same. The board shall also
22 have authority to authorize osteopathic medical corpo-
23 rations, in accordance with the provisions of sections
24 nine-a and nine-b of this article, to practice osteopathic
25 medicine and surgery through duly licensed osteopathic
26 physicians and surgeons.

27 The board shall have the power to certify and
28 establish standards for employment of assistants to
29 osteopathic physicians and surgeons.

30 No license shall be issued under the provisions of this
31 section until the person applying therefor shall have
32 paid to the board a fee of five dollars.

§30-14-6. Issuance of license without examination; fee.

1 The board may at its discretion issue a license without
2 examination to an applicant who has been licensed by
3 the national board of examiners for osteopathic physi-
4 cians and surgeons, and to an applicant who has been
5 licensed by examination in any country, state, territory,
6 province or the District of Columbia, provided the
7 requirements for licensure in the country, state,
8 territory, province or the District of Columbia in which
9 the applicant is licensed, are deemed by the board to
10 have been equivalent to requirements for licensure in
11 this state at the date such license was issued. The board
12 may also at its discretion issue a license without
13 examination to an osteopathic physician and surgeon
14 who is a graduate of an approved osteopathic college and
15 who has passed the examination for admission into the
16 medical corps of any of the armed services of the United
17 States or the United States public health service. But
18 no license shall be issued under the provisions of this
19 section until the person applying therefor shall have
20 paid to the board a fee of one hundred fifty dollars and
21 any other fees applicable to investigation.

§30-14-8. Temporary permits.

1 A temporary permit to practice in areas where
2 medical services are needed, as determined by the
3 board, may be granted by the board to a qualified
4 applicant eligible for licensure who applies for exami-
5 nation during the period between examinations or
6 regular meetings of the board. A temporary permit may
7 also be granted by the board to a qualified applicant
8 eligible for licensure by national boards or reciprocity
9 for a period of thirty days, in which time applicant must
10 appear before one of the board members for an inter-
11 view for permanent licensure. Such temporary permit

12 shall be effective until its holder has either been granted
13 or denied a license at the next regular meeting of the
14 board. Such permit shall be subject to revocation when,
15 in the opinion of the board, the terms and conditions
16 prescribed in the permit have been violated.

§30-14-8a. Resident physicians.

1 Any resident physician who has held a temporary
2 certificate in the state of West Virginia prior to the first
3 day of January, one thousand nine hundred eighty-
4 seven, is entitled to apply for and obtain a permanent
5 license. In lieu of any other requirement of law,
6 including the provisions of article three of this chapter,
7 the physician is entitled to apply for and obtain a
8 permanent license by virtue of the fact that he or she
9 has held a temporary certificate and has practiced in the
10 state of West Virginia during the period of temporary
11 certification.

§30-14-9a. Osteopathic medical corporations — Application for registration; fee; notice to secretary of state of issuance of certificate; action by secretary of state.

1 When one or more osteopathic physicians or surgeons
2 duly licensed to practice osteopathic medicine in the
3 state of West Virginia wish to form an osteopathic
4 medical corporation, such osteopathic physician or
5 surgeon, or osteopathic physicians or surgeons, shall file
6 a written application with the board on a form pres-
7 cribed by the board, and shall furnish proof satisfactory
8 to the board that the signer or all of the signers of such
9 application is or are a duly licensed osteopathic
10 physician or surgeon or osteopathic physicians or
11 surgeons. A fee of one hundred dollars shall accompany
12 each such application, no part of which shall be
13 returnable.

14 If the board finds that the signer or all of the signers
15 of such application are duly licensed, the board shall
16 notify the secretary of state that a certificate of
17 authorization has been issued to the individual or
18 individuals signing such application.

19 When the secretary of state receives notification from
20 the board that a certain individual or individuals has or
21 have been issued a certificate of authorization, he shall
22 attach such authorization to the corporation application
23 and upon compliance by the corporation with chapter
24 thirty-one of this code shall notify the incorporators that
25 such corporation, through a duly licensed osteopathic
26 physician or surgeon or duly licensed osteopathic
27 physicians and surgeons, may engage in the practice of
28 osteopathic medicine and surgery.

§30-14-10. Annual renewal of license; fee; refresher training a prerequisite; effect of failure to renew; reinstatement.

1 All holders of certificates of license to practice as
2 osteopathic physicians and surgeons in this state shall
3 renew them biennially on or before July first, by the
4 payment of a renewal fee of fifty-five dollars to the
5 secretary of the board. The secretary of the board shall
6 notify each certificate holder by mail of the necessity of
7 renewing his certificate at least thirty days prior to July
8 first of each year.

9 As a prerequisite to renewal of a certificate of license
10 issued by the board, each holder of such a certificate
11 shall furnish biennially to the secretary of the board
12 satisfactory evidence of having completed thirty-two
13 hours of educational refresher course training, of which
14 the total amount of hours must be AOA approved, and
15 fifty percent of the required thirty-two hours shall be
16 category (1).

17 The failure to renew a certificate of license shall
18 operate as an automatic suspension of the rights and
19 privileges granted by its issuance.

20 A certificate of license suspended by a failure to make
21 a biennial renewal thereof may be reinstated by the
22 board upon compliance of the certificate holder with the
23 following requirements: (a) Presentation to the board of
24 satisfactory evidence of educational refresher training of
25 quantity and standard approved by the board for the
26 previous two years; (b) payment of all fees for the
27 previous two years that would have been paid had the

28 certificate holder maintained his certificate in good
29 standing; and (c) payment to the board of a reinstatement
30 fee of not to exceed twenty-five dollars as
31 determined by the board.

**ARTICLE 14A. ASSISTANTS TO OSTEOPATHIC PHYSICIANS
AND SURGEONS.**

§30-14A-2. Approval and certification by board of osteopathy.

§30-14A-3. Fees.

**§30-14A-2. Approval and certification by board of
osteopathy.**

1 Approval of a job description and establishment of
2 qualifications for employment as an assistant to an
3 osteopathic physician and surgeon must be obtained
4 from the board of osteopathy. The board of osteopathy
5 shall certify each qualified applicant for employment as
6 an assistant to an osteopathic physician and surgeon
7 upon submission of a job description, and shall provide
8 for biennial renewal of certification. The board shall
9 have the power to revoke or suspend any certification
10 of an assistant to an osteopathic physician and surgeon,
11 for cause, after having given the person an opportunity
12 to be heard in the manner provided by sections eight
13 and nine, article one of this chapter.

§30-14A-3. Fees.

1 Each job description submitted by a permanently
2 licensed osteopathic physician and surgeon shall be
3 accompanied by a fee of fifty dollars. A fee of twenty-
4 five dollars shall be charged for each biennial renewal
5 of certification.

CHAPTER 104

(H. B. 2048—By Delegate Flanigan)

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

AN ACT to amend and reenact sections four, five and six,
article twenty-five, chapter thirty of the code of West
Virginia, one thousand nine hundred thirty-one, as

amended, relating to the qualifications for licensure of nursing homes; exceptions; application; increase in license fees and fees for renewal; display of license and emergency permits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25. NURSING HOME ADMINISTRATORS.

§30-25-4. Qualifications for license; exceptions; application; fees.

§30-25-5. Issuance of license; renewal of license; renewal fee; display of license.

§30-25-6. Emergency permit.

§30-25-4. Qualifications for license; exceptions; application; fees.

1 (a) To be eligible for a license as a nursing home
2 administrator a person must:

3 (1) Be of good moral character;

4 (2) Possess such qualifications and meet such reasona-
5 ble standards as the board may prescribe pursuant to
6 subsection (a), section seven of this article;

7 (3) Pass the examination prescribed by the board in
8 the subject of nursing home administration; and

9 (4) Have sufficient knowledge and soundness of
10 judgment to be able to adequately discharge the
11 functions of a nursing home administrator.

12 (b) Any person who holds a license or certificate as
13 a nursing home administrator issued by any other state,
14 the requirements for which license or certificate are
15 found by the board to be at least as great as those
16 provided in this article may be granted a license without
17 examination if he meets all of the other requirements
18 for licensing in this state.

19 (c) Any applicant for any such license shall submit an
20 application therefor at such time, in such manner, on
21 such forms and containing such information as the
22 board may, from time to time, by reasonable rules and
23 regulations prescribe and pay to the board a license fee

24 of two hundred dollars, which fee shall be returned to
25 the applicant if he is denied a license.

§30-25-5. Issuance of license; renewal of license; renewal fee; display of license.

1 Whenever the board finds that an applicant meets all
2 of the requirements of this article for a license as a
3 nursing home administrator, it shall forthwith issue to
4 him such license; otherwise the board shall deny the
5 same. The license shall be valid for a period ending on
6 June thirty next ensuing and may be renewed without
7 examination upon application for renewal on a form
8 prescribed by the board and payment to the board of
9 a renewal fee of one hundred dollars: *Provided*, That the
10 board may deny an application for renewal for any
11 reason which would justify the denial of the original
12 application for a license. The board shall prescribe the
13 form of licenses and each such license shall be conspic-
14 uously displayed by the licensee at the nursing home
15 which he administers.

§30-25-6. Emergency permit.

1 If a licensed nursing home administrator dies or is
2 unable to continue as such from an unexpected cause,
3 the owner, governing body or other appropriate author-
4 ity in charge of the nursing home involved may
5 designate an acting administrator to whom the board
6 may immediately issue an emergency permit if it finds
7 such appointment will not endanger the safety of the
8 occupants of such nursing home. Such emergency
9 permit shall be valid for a period determined by the
10 board not to exceed six months and shall not be
11 renewed. The fee for an emergency permit shall be one
12 hundred dollars.

CHAPTER 105

(H. B. 2667—By Delegates Leary and Childers)

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

AN ACT to amend and reenact sections two, three, seven, nine,
fourteen and fifteen, article twenty-six, chapter thirty of

the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to hearing-aid dealers and fitters; prohibiting state or local governmental organizations or agencies from licensure eligibility; changing the annual meeting of the board of hearing-aid dealers; increasing the per diem salary for board members; increasing the licensing fee; requiring continuing education as a prerequisite for renewal of license; clarifying matters to be ascertained by a licensee prior to the sale or fitting of hearing aids; and simplifying the information to be furnished to a person supplied with a hearing aid.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. HEARING-AID DEALERS AND FITTERS.

- §30-26-2. Engaging in practice of hearing-aid dealer or trainee without license prohibited; exceptions.
- §30-26-3. West Virginia board of hearing-aid dealers created; members; qualifications; term; oath; salary and expenses; powers and duties.
- §30-26-7. Results of examination disclosed to applicant; issuance of license; fees.
- §30-26-9. Renewal of license.
- §30-26-14. Matters to be ascertained by licensee prior to the sale or fitting of hearing aids.
- §30-26-15. Receipt required to be furnished to a person supplied with hearing aid; information required; right to rescind purchase agreement.

§30-26-2. Engaging in practice of hearing-aid dealer or trainee without license prohibited; exceptions.

- 1 (a) Except as provided in subsections (b), (c) and (d)
- 2 hereof no person shall, on or after the effective date of
- 3 this article, engage in the practice of dealing in or
- 4 fitting of hearing aids, either as a hearing-aid dealer,
- 5 fitter or as a trainee, nor shall any person advertise or
- 6 assume any such practice, without first being licensed

7 or otherwise qualified under the provisions of this
8 article.

9 (b) If the applicant is a partnership, trust, association,
10 corporation or other like organization, the application,
11 in addition to such other information as the board may
12 require, shall be accompanied by an application for a
13 license for each person, whether owner or employee, of
14 such applicant who serves in the capacity of a hearing-
15 aid dealer or fitter, or shall contain a statement that
16 such applications for all such persons are submitted
17 separately. No partnership, trust, association, corpora-
18 tion or other like organization shall permit any unli-
19 censed person to sell hearing aids or to engage in the
20 practice of dealing in or fitting of hearing aids.

21 (c) This article is not intended to prevent any person
22 who is not licensed under this article from engaging in
23 the practice of measuring human hearing for the
24 purpose of selection of hearing aids, provided such
25 person or organization employing such person does not
26 sell hearing aids or accessories thereto, except in the
27 case of earmolds to be used only for the purpose of
28 audiologic evaluation.

29 State or local governmental organizations or agencies
30 and organizations chartered as not-for-profit shall not be
31 eligible for licensure to fit and dispense hearing aids.

**§30-26-3. West Virginia board of hearing-aid dealers
created; members; qualifications; term;
oath; salary and expenses; powers and
duties.**

1 There is hereby created the West Virginia board of
2 hearing-aid dealers, which shall be composed of five
3 members to be appointed by the governor, by and with
4 the advice and consent of the Senate. The members of
5 the board shall be residents of this state. One member
6 shall be a person licensed to practice medicine in this
7 state and one member shall hold a degree in audiology
8 from an accredited college or university. The remaining
9 three members shall be persons having no less than five
10 years' experience as hearing-aid dealers or fitters and
11 shall hold a valid license under the provisions of this

12 article, except that the hearing-aid dealers or fitters to
13 be first appointed to the board shall obtain a license
14 under the provisions of this article within six months
15 following their appointment to the board.

16 The term of office of each member of the board shall
17 be four years, excepting that as to the members first
18 appointed to the board, one shall be appointed for two
19 years; two shall be appointed for three years; and two
20 shall be appointed for four years. A board member shall
21 serve until his successor has been duly appointed and
22 qualified and any vacancy in the office of a member
23 shall be filled by appointment for the unexpired term
24 of such member. Any member of the board shall be
25 eligible for reappointment.

26 The board shall annually at its meeting first succeed-
27 ing the first day of May elect from its own members a
28 chairman and vice chairman.

29 Each member of the board shall receive for each day
30 actually engaged in the duties of his office, a per diem
31 salary of one hundred dollars and shall be reimbursed
32 for all reasonable and necessary expenses actually
33 incurred in the performance of his duties as a member
34 of such board. All fees and other moneys collected by
35 the board, pursuant to the provisions of this article, shall
36 be kept in a separate fund and shall be expended solely
37 for the purposes of this article. The compensation for the
38 members of the board and all expenses incurred under
39 this article shall be paid from this special fund and no
40 such compensation or expenses shall be paid from the
41 general revenue fund of this state. All disbursements of
42 funds necessary to carry out the provisions of this article
43 shall be so disbursed only upon the authority of the
44 board.

45 The board is hereby empowered, with the assistance
46 of the department to generally supervise, regulate and
47 control the practice of dealing in or fitting of hearing
48 aids in this state, and in so doing, shall administer
49 qualifying examinations in accordance with the provi-
50 sions of this article to test the knowledge and proficiency
51 of all prospective licensees or trainees.

52 The board may purchase and maintain or rent
53 audiometric equipment and other facilities necessary to
54 carry out the examination of applicants as provided in
55 this article and may purchase such other equipment and
56 supplies and employ such persons as it deems approp-
57 riate to carry out the provisions of this article.

58 The board shall promulgate reasonable rules and
59 regulations in accordance with and subject to the
60 provisions of chapter twenty-nine-a of this code:

61 (a) For the proper performance of its duties;

62 (b) To define and prescribe the ethical practice of
63 dealing in or fitting of hearing aids for the safety,
64 protection and welfare of the public;

65 (c) To govern the time, place and manner of conduct-
66 ing the examinations required by this article and the
67 standard, scope and subject of such examinations, which
68 examinations shall, as a minimum, conform with the
69 standards, scope and subjects set forth in section six of
70 this article and manner and form in which applications
71 for such examinations shall be filed;

72 (d) To establish procedures for determining whether
73 persons holding similar valid licenses from other states
74 or jurisdictions shall be required to take and success-
75 fully pass the appropriate qualifying examination as a
76 condition for such licensing in this state.

**§30-26-7. Results of examination disclosed to applicant;
issuance of license; fees.**

1 (a) Any person who has taken the examination shall
2 be notified by the board within thirty days following
3 such examination as to whether he has satisfactorily
4 passed the examination. If such person has failed to pass
5 the examination, he shall be notified of the reasons for
6 such failure and the particular portions of the exami-
7 nation which he failed to pass. Such person shall also
8 be advised of his right to take the examination in the
9 future.

10 If such applicant has satisfactorily passed the exam-
11 ination, he shall be advised of that fact by the board and,

12 upon payment of fifty dollars, the board shall register
13 the applicant as a licensee and shall issue a license to
14 such applicant. Such license shall remain in effect until
15 the next succeeding thirtieth day of June.

16 (b) Within six months following the effective date of
17 this article, any applicant for a license who has been
18 engaged in the practice of dealing in or fitting of
19 hearing aids in this state for a period of three years
20 immediately prior to such effective date, shall be so
21 registered and issued a license without being required
22 to undergo or take the examination required by this
23 article: *Provided*, That such person meets all other
24 requirements of this article and the rules and regula-
25 tions promulgated pursuant thereto. All of the fees
26 which such prospective licensee would be otherwise
27 required to pay shall be paid by such prospective
28 licensee in the same manner and to the same extent as
29 if such prospective licensee had not so engaged in such
30 practice in this state for such three-year period.

31 (c) The issuance of a license by the board must have
32 the concurrence of a majority of its members.

§30-26-9. Renewal of license.

1 (a) A person who is engaged in the practice of dealing
2 in or fitting of hearing aids shall annually pay to the
3 board a fee of forty dollars for a renewal of his license.
4 A thirty-day period shall be allowed after expiration of
5 a license during which any such license may be renewed
6 on payment of a fee of forty-five dollars to the board.
7 After the expiration of such thirty-day period, the board
8 may renew such license upon the payment of fifty
9 dollars to the board. No person who applies for renewal,
10 whose license was suspended for failure to renew, shall
11 be required to submit to any examination as a condition
12 of renewal if application is made within two years
13 following the date such license was so suspended.

14 (b) In each even numbered year beginning with the
15 year one thousand nine hundred eighty-eight, each
16 applicant for renewal of license shall present to the
17 board evidence of continuing study and education of not
18 less than twenty hours in a course of study approved by

19 the board. Such twenty hours of instruction must have
20 been gained during the immediately preceding two
21 years.

§30-26-14. Matters to be ascertained by licensee prior to the sale or fitting of hearing aids.

1 (a) Every licensee engaged in the practice of dealing
2 in or fitting of hearing aids shall, prior to the sale or
3 the fitting of a hearing aid intended to be worn or used
4 by any person under eighteen years of age, first
5 ascertain whether such person has within the next
6 preceding six months been examined for the defective
7 or impaired hearing condition sought to be relieved by
8 an otolaryngologist or other duly licensed physician. If
9 such person has been so examined, the licensee shall,
10 prior to the sale or fitting of such hearing aid, obtain
11 from such otolaryngologist or physician written author-
12 ity to fit a hearing aid. If such person has not been so
13 examined, the licensee shall not proceed to the sale or
14 fitting of a hearing aid until after such person has been
15 so examined. If the prospective user is eighteen years
16 of age or older, the hearing aid dispenser may afford
17 the prospective user an opportunity to waive the medical
18 evaluation requirement provided that the hearing aid
19 dispenser:

20 (1) Informs the prospective user that the exercise of
21 the waiver is not in the user's best health interest;

22 (2) Does not in any way actively encourage the
23 prospective user to waive such a medical evaluation;

24 (3) Affords the prospective user the opportunity to
25 sign the following statement: I have been advised by
26 (hearing aid dispenser's name) that the Food and Drug
27 Administration has determined that my best health
28 interest would be served if I had a medical evaluation
29 by a licensed physician, preferably one who specializes
30 in diseases of the ear, before purchasing a hearing aid.
31 I do not wish a medical evaluation before purchasing a
32 hearing aid.

33 (b) Prior to the sale of a hearing aid, every licensee
34 shall be required to advise in writing, in the manner and

35 form prescribed by the board, the person to whom he
36 intends to sell or fit with such hearing aid that such
37 person's best interest would be served by consulting an
38 otolaryngologist or other physician specializing in
39 diseases of the ear, or any other physician duly licensed
40 to practice medicine in this state, if any of the following
41 conditions are found upon examination of such person:

42 (1) Visible congenital or traumatic deformity of the
43 ear;

44 (2) History of active ear discharge within the previous
45 ninety days;

46 (3) History of a sudden or rapidly progressive hearing
47 loss within the previous ninety days;

48 (4) Acute or chronic dizziness;

49 (5) Unilateral hearing loss of sudden or recent onset
50 within the previous ninety days; or

51 (6) Significant air-bone gap.

52 (c) A copy of any writing or form required to be given
53 to a prospective purchaser or other person by the terms
54 of this section shall be retained in the records of the
55 licensee for a period of seven years following the
56 issuance of each writing.

**§30-26-15. Receipt required to be furnished to a person
supplied with hearing aid; information
required; right to rescind purchase
agreement.**

1 (a) Any person who practices the fitting and sale of
2 hearing aids shall deliver to each person supplied with
3 a hearing aid a receipt which shall contain his signa-
4 ture, his business address and the number of his license;
5 the specifications as to the make and model of the
6 hearing aid furnished; the full terms of the sale,
7 including the date upon which the hearing aid was
8 supplied to the person; and the following statement:
9 "Any person supplied with a hearing aid by a hearing-
10 aid dealer licensed in this state has the right to return
11 the hearing aid to the dealer from whom the aid was
12 purchased within thirty days after receipt of the aid and

13 rescind the purchase agreement except for reasonable
14 fitting and examination charges if the person is
15 dissatisfied with the hearing aid." If a hearing aid which
16 has been previously sold at retail is sold, the receipt
17 shall be clearly marked as "used" or "reconditioned,"
18 whichever is applicable, with terms of guarantee, if any.

19 Such receipt shall be in the manner and form as
20 prescribed by the board in its rules and regulations.
21 Such rules and regulations shall prescribe the type and
22 size of print to be used in such receipt and the receipt
23 shall set forth such additional information as the board
24 may prescribe. A copy of such receipt shall be retained
25 in the records of the licensee for a period of seven years
26 following the issuance of such receipt.

27 (b) Each person supplied with a hearing aid by a
28 hearing-aid dealer licensed pursuant to the provisions of
29 this article shall have the right to return the hearing
30 aid to the dealer within thirty calendar days of receipt
31 and rescind the purchase agreement if the hearing aid
32 does not function properly, cannot be adjusted to
33 satisfactorily correct the deficiency in the person's
34 hearing or the person is otherwise dissatisfied with the
35 hearing aid. If a hearing-aid dealer, pursuant to being
36 notified by a person to whom he has supplied a hearing
37 aid that the hearing aid does not function properly, does
38 not satisfactorily correct the deficiency in the person's
39 hearing or that the person is otherwise dissatisfied with
40 the hearing aid, makes an adjustment to the hearing aid
41 or advises the person to continue use of the hearing aid
42 for the purpose of becoming more accustomed thereto
43 or any other reason, the right of the person to whom the
44 hearing aid was supplied shall be extended for thirty
45 calendar days following the date upon which such
46 adjustment was made or advisement was given.

47 (c) An exercise of the right to rescind the purchase
48 agreement by a person to whom a hearing aid has been
49 supplied may not preclude the dealer from charging
50 reasonable fees for examination and fitting. The
51 maximum fees which may be charged by a hearing-aid
52 dealer for examination and fitting shall be fixed by the
53 West Virginia board of hearing-aid dealers by rule and

54 regulation lawfully promulgated in accordance with the
55 provisions of chapter twenty-nine-a of this code.

CHAPTER 106

(S. B. 323—By Senators Tonkovich, Mr. President, Jones and Chernenko)

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

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-nine-a, relating to standards for professional fire fighters training; definitions; original appointment; professional fire fighters certification board; duties of board; certification requirements; review of certification; and compliance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29A. STANDARDS FOR PROFESSIONAL FIRE FIGHTERS TRAINING; REGISTERED APPRENTICESHIP AND CERTIFICATION.

- §30-29A-1. Definitions.
- §30-29A-2. Original appointments.
- §30-29A-3. Professional fire fighters certification board.
- §30-29A-4. Duties of the professional fire fighters certification board.
- §30-29A-5. Certification requirements.
- §30-29A-6. Review of certification.
- §30-29A-7. Compliance.

§30-29A-1. Definitions.

- 1 For the purposes of this article, unless a different
- 2 meaning clearly appears in the context:
- 3 "Bureau of apprenticeship and training" means the
- 4 bureau of apprenticeship and training of the United
- 5 States Department of Labor;

6 "Certificate of certification" means a certificate issued
7 by the bureau of apprenticeship and training stating
8 that a person has complied with the standards set forth
9 in this article;

10 "Local training board" means the board of the local
11 paid fire department required to be established by the
12 standards set forth in section two of this article;

13 "Municipality" means any incorporated town or city
14 whose boundaries lie within the geographic boundaries
15 of the state;

16 "Paid fire department" means those paid fire depart-
17 ments established under the provisions of section nine,
18 article fifteen, chapter eight of this code;

19 "Professional fire fighter" means those persons who
20 are employed by a municipality in the state that has a
21 paid fire department;

22 "State" means the state of West Virginia;

23 "State board" means the professional fire fighters
24 certification board as established in section three of this
25 article;

26 "West Virginia professional fire chiefs association"
27 means the association representing paid fire chiefs in
28 the state of West Virginia; and

29 "West Virginia professional fire fighters association"
30 means the association representing paid fire fighters in
31 the state of West Virginia.

§30-29A-2. Original appointments.

1 Original appointments to paid fire departments shall
2 enroll and complete the requirements as registered with
3 the bureau of apprenticeship and training of the United
4 States Department of Labor.

5 On and after the effective date of this article, all
6 original appointments in a paid fire department subject
7 to the civil service provisions of section sixteen, article
8 fifteen, chapter eight of this code, shall enroll and
9 complete the requirements as registered with the
10 bureau of apprenticeship and training of the United

- 11 States Department of Labor, for the craft of fire
12 fighting.

§30-29A-3. Professional fire fighters certification board.

1 (a) A professional fire fighters certification board is
2 hereby created and assigned responsibility for review of
3 programs and standards, for training of apprenticeship
4 and certification of professional fire fighters in the state.
5 The state board shall be comprised of five members
6 including two representatives appointed by each of the
7 following: The West Virginia professional fire fighters
8 association; the West Virginia professional fire chiefs
9 association; and one representative from the bureau of
10 apprenticeship and training of the United States
11 Department of Labor.

12 (b) The state board shall elect a chairperson. Meetings
13 may be held upon the call of the chairperson. A majority
14 of the members of the state board constitutes a quorum.

§30-29A-4. Duties of the professional fire fighters certification board.

1 The professional fire fighters certification board shall,
2 by or pursuant to rule or regulation:

3 (a) Establish standards governing the quality of
4 training of paid fire departments in the state pursuant
5 to section two of this article.

6 (b) Establish the level of skill required for
7 certification.

8 (c) Promulgate rules and procedures for the local
9 training board to follow in securing certification of a
10 paid fire fighter by the bureau of apprenticeship and
11 training of the United States Department of Labor.

12 (d) Certify the paid fire fighter as provided in section
13 five of this article and request a certificate of certifica-
14 tion from the bureau of apprenticeship and training of
15 the United States Department of Labor to the person
16 that has qualified.

§30-29A-5. Certification requirements.

1 Standards for certification must meet or exceed those

2 of the National Fire Protection Association Standards
3 No. 1001 as amended and updated from year to year.

§30-29A-6. Review of certification.

1 Certification of each person certified as provided in
2 section four of this article shall be reviewed annually,
3 by the state board, in order to update that person's
4 knowledge of new or improved procedures in this
5 profession.

§30-29A-7. Compliance.

1 The state board shall ensure employer and employee
2 compliance with this article. The chief of the paid fire
3 department and the local training board shall see and
4 assure compliance with all established criteria. The
5 individuals mentioned in this section, and in section
6 three of this article, shall be in full sympathy with the
7 purposes of the training and apprenticeship and
8 certification provisions of this article.



CHAPTER 107

(H. B. 2805—By Delegate Seacrist)

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

AN ACT to amend and reenact section three, article five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public employees eligible for optional lump-sum payment at termination of employment for unused annual leave; requiring that no employee contribution deduction occur because no retirement service credit awardable; and providing for refund to former employee in the event such contribution was mistakenly withheld.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES;
LUMP SUM PAYMENTS FOR ANNUAL LEAVE
AT RETIREMENT.**

**§5-5-3. Optional payment to employee in lump sum
amount for accrued and unused annual leave
at termination of employment; no withholding
of any employee contribution deduction.**

1 Every eligible employee, as defined in section one of
2 this article, at the time his or her active employment
3 ends due to resignation, death, retirement or otherwise
4 may be paid in a lump sum amount, at his or her option,
5 for accrued and unused annual leave at the employee's
6 usual rate of pay at such time. The lump sum payment
7 shall be made by the time of what would have been the
8 employee's next regular payday had his employment
9 continued. In determining the amount of annual leave
10 entitlement, weekends, holidays or other periods of
11 normal, noncountable time shall be excluded, and no
12 deductions may be made for contributions toward
13 retirement from lump sum payments for unused,
14 accrued annual leave, since no period of service credit
15 is granted in relation thereto, and where any such
16 deduction of employee contribution may have been
17 heretofore made, a refund of such shall be granted the
18 former employee and made by the head of the respective
19 former employer spending unit.

CHAPTER 108

(H. B. 2235—By Delegate Murphy)

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

AN ACT to amend article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-b, relating to authorizing the state treasurer to make direct deposits of salaries of state employees to accounts at banks or other financial institutions designated by the employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. APPROPRIATIONS AND EXPENDITURES.

§12-3-1b. Voluntary direct deposits by treasurer of salaries of employees to banks or other financial institutions.

1 Any officer or employee of the state of West Virginia
2 may authorize that his net wages be deposited directly
3 to his account in any bank or other financial institution
4 within this state. The direct deposits may be authorized
5 on a form provided by the treasurer. Upon execution of
6 such authorization and its receipt by the office of the
7 treasurer, the direct deposits shall be made in the
8 manner specified on the form and remitted to the
9 designated bank or other financial institution on or
10 before the day or days the officer or employee is due his
11 net wages. Direct deposit authorizations may be revoked
12 at any time thirty days prior to the date on which the
13 direct deposit is regularly made and on a form to be
14 provided by the office of the treasurer.

CHAPTER 109

(S. B. 706—By Senators Tomblin and Jackson)

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

AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of public safety; creating the salaried positions of first lieutenant and second lieutenant and increasing the salaries of certain members of the department.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-5. Salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

1 Members of the department shall receive annual
2 salaries pursuant to appropriation by the Legislature,
3 payable at least monthly as follows:

4 Any lieutenant colonel shall receive an annual salary
5 of thirty-three thousand six hundred seventy-two
6 dollars; any major shall receive an annual salary of
7 thirty-one thousand fifty-six dollars; any captain shall
8 receive an annual salary of twenty-eight thousand nine
9 hundred forty-four dollars; any first lieutenant shall
10 receive an annual salary of twenty-seven thousand three
11 hundred seventy-two dollars; any second lieutenant shall
12 receive an annual salary of twenty-five thousand eight
13 hundred dollars; any master sergeant or first sergeant
14 shall receive an annual salary of twenty-four thousand
15 two hundred twenty-eight dollars; any sergeant shall
16 receive an annual salary of twenty-two thousand six
17 hundred fifty-six dollars; any corporal shall receive an
18 annual salary of twenty-one thousand seventy-two
19 dollars; any trooper first class shall receive an annual
20 salary of nineteen thousand five hundred dollars; and
21 any newly enlisted trooper shall receive a salary of one
22 thousand four hundred five dollars monthly during the
23 period of his basic training, and upon the satisfactory
24 completion of such training and assignment to active
25 duty, each such trooper shall receive, during the
26 remainder of his first year's service, a salary of one
27 thousand five hundred fourteen dollars monthly. During
28 the second year of his service in the department, each
29 trooper shall receive an annual salary of eighteen
30 thousand five hundred fifty-two dollars; during the third
31 year of his service each such trooper shall receive an
32 annual salary of eighteen thousand eight hundred fifty-

33 two dollars; and during the fourth and fifth year of such
34 trooper's service and for each year thereafter, he shall
35 receive an annual salary of nineteen thousand ninety-
36 two dollars. Each member of the department whose
37 salary is fixed and specified herein shall receive and be
38 entitled to an increase in salary over that hereinbefore
39 set forth, for grade in rank, based on length of service,
40 including that heretofore and hereafter served with the
41 department as follows: At the end of five years of service
42 with the department, such member shall receive a
43 salary increase of three hundred dollars to be effective
44 during his next three years of service and a like increase
45 at three-year intervals thereafter, with such increases to
46 be cumulative.

47 In applying the foregoing salary schedule where
48 salary increases are provided for length of service,
49 members of the department in service at the time this
50 article becomes effective shall be given credit for prior
51 service and shall be paid such salaries as the same
52 length of service will entitle them to receive under the
53 provisions hereof.

54 The Legislature finds and declares that there is
55 litigation pending in the circuit court of Kanawha
56 County on the question whether members of the
57 department of public safety are covered by the provi-
58 sions of the state wage and hour law, article five-c,
59 chapter twenty-one of this code. The Legislature further
60 finds and declares that because of the unique duties of
61 members of the department, it is not appropriate to
62 apply said wage and hour provisions to them. Accord-
63 ingly, members of the department of public safety are
64 hereby excluded from the provisions of said wage and
65 hour law. The express exclusion hereby enacted shall
66 not be construed as any indication that such members
67 were or were not heretofore covered by said wage and
68 hour law.

69 In lieu of any overtime pay they might otherwise have
70 received under the wage and hour law, and in addition
71 to their salaries and increases for length of service,
72 members who have completed basic training may
73 receive supplemental pay as hereinafter provided.

74 The superintendent shall, within thirty days after the
75 effective date hereof, promulgate a rule or regulation to
76 establish the number of hours per month which shall
77 constitute the standard work month for the members of
78 the department. Such rule or regulation shall further
79 establish, on a graduated hourly basis, the criteria for
80 receipt of a portion or all of such supplemental payment
81 when hours are worked in excess of said standard work
82 month. Such rule or regulation shall be promulgated
83 pursuant to the provisions of chapter twenty-nine-a of
84 this code. The superintendent shall certify monthly to
85 the department's payroll officer the names of those
86 members who have worked in excess of the standard
87 work month and the amount of their entitlement to
88 supplemental payment.

89 The supplemental payment shall be in an amount
90 equal to one and one-half percent of the annual salary
91 of a trooper during his second year of service, not to
92 exceed two hundred twenty-five dollars monthly. The
93 superintendent and civilian employees of the depart-
94 ment shall not be eligible for any such supplemental
95 payments.

96 Each member of the department, except the superin-
97 tendent and civilian employees, shall execute, before
98 entering upon the discharge of his duties, a bond with
99 security in the sum of five thousand dollars payable to
100 the state of West Virginia, conditioned upon the faithful
101 performance of his duties, and such bond shall be
102 approved as to form by the attorney general and to
103 sufficiency by the governor.

104 Any member of the department who is called to
105 perform active duty for training or inactive duty
106 training in the national guard or any reserve component
107 of the armed forces of the United States annually shall
108 be granted upon request leave time not to exceed thirty
109 calendar days for the purpose of performing such active
110 duty for training or inactive duty training, and the time
111 so granted shall not be deducted from any leave
112 accumulated as a member of the department.

CHAPTER 110

(H. B. 2276—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

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

AN ACT to amend and reenact section forty, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the commission on drunk driving prevention; and adding a representative of the governor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-40. Commission on drunk driving prevention created; members; quorum; meetings.

1 There is hereby created within the department of
2 public safety the commission on drunk driving preven-
3 tion which shall consist of eight members as follows: The
4 superintendent of the department of public safety; the
5 commissioner of the department of motor vehicles; the
6 alcohol beverage control commissioner; the governor's
7 representative for highway safety; a prosecuting
8 attorney appointed by the governor from a list of three
9 prosecuting attorneys submitted by the prosecuting
10 attorney's association; a county sheriff appointed by the
11 governor from a list of three county sheriffs submitted
12 by the county sheriff's association; a municipal police
13 officer appointed by the governor from a list of three
14 officers submitted by the state fraternal order of police;
15 a lay citizen of the state appointed by the governor, who
16 has demonstrated an interest in the prevention of drunk
17 driving.

18 The superintendent of the department of public safety
19 shall be the chairman, ex officio, of the commission and
20 shall provide the necessary staff and meeting facilities

21 to the commission. The appointed members shall serve
22 for a term of two years and may be reappointed. Any
23 appointed member who ceases to occupy the position
24 which qualified him for the appointment shall imme-
25 diately vacate his membership on the commission. Each
26 member shall serve until the appointment of his
27 successor.

28 No member shall receive any compensation, but shall
29 be reimbursed for actual and necessary expenses
30 incurred in the performance of his duties.

31 A majority of the members of the commission shall
32 constitute a quorum for the transaction of business.
33 Meetings shall be held at the call of the chairman or of
34 a majority of its members.

CHAPTER 111

(Com. Sub. for H. B. 2684—By Mr. Speaker, Mr. Chambers, and Delegate Pritt)

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

AN ACT to amend and reenact sections one and two, article one, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article four, all relating to the powers and duties of the public service commission generally; authorizing such commission to prescribe and enforce safety rules and regulations pertaining to the operation of heavy motor vehicles by private commercial carriers of both hazardous and conventional cargo over the state's interstate highways.

Be it enacted by the Legislature of West Virginia:

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

Article**1. Purposes, Definitions and Exemptions.****4. Private Commercial Carriers of Property by Motor Vehicle.****ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.****§24A-1-1. Purposes.****§24A-1-2. Definitions.****§24A-1-1. Purposes.**

1 It is hereby declared to be the purpose and policy of
2 the Legislature in enacting this chapter to confer upon
3 the public service commission of West Virginia, in
4 addition to all other powers conferred and duties
5 imposed upon it by law, the power, authority and duty
6 to supervise and regulate the transportation of persons
7 and property for hire by motor vehicles upon or over the
8 public highways of this state so as to: (a) Protect the
9 safety and welfare of the traveling and shipping public
10 in their use of transportation agencies by motor vehicle;
11 (b) preserve, foster and regulate transportation and
12 permit the coordination of transportation facilities; (c)
13 provide the traveling and shipping public transportation
14 agencies rendering stabilized service at just and
15 reasonable rates. This chapter shall apply to persons and
16 motor vehicles engaged in interstate commerce and to
17 private commercial carriers by motor vehicle as defined
18 in section two of this article, to the extent permitted by
19 the constitution and laws of the United States.

§24A-1-2. Definitions.

1 When used in this chapter: (a) The term "motor
2 vehicle" means, and includes, any automobile, truck,
3 tractor, truck-tractor, trailer, semitrailer, motorbus,
4 taxicab, any self-propelling motor-driven motor vehicle
5 or any combination thereof, used upon any public
6 highway in this state for the purpose of transporting
7 persons or property; (b) the term "public highway"
8 means any public street, alley, road or highway, or
9 thoroughfare of any kind in this state used by the public;
10 (c) the term "commission" means the public service
11 commission of West Virginia; (d) the term "person"
12 means and includes any individual, firm, copartnership,
13 corporation, company, association or joint-stock associ-
14 ation, and includes any trustee, receiver, assignee or

15 personal representative thereof; (e) the term "common
16 carrier by motor vehicle" means any person who
17 undertakes, whether directly or by lease or any other
18 arrangement, to transport passengers or property, or
19 any class or classes of property, for the general public
20 over the highways of this state by motor vehicles for
21 hire, whether over regular or irregular routes, including
22 such motor vehicle operations of carriers by rail, water
23 or air and of express or forwarding agencies, and leased
24 or rented motor vehicles, with or without drivers; (f) the
25 term "contract carrier by motor vehicle" means any
26 person not included in subdivision (e) of this section, who
27 under special and individual contracts or agreements,
28 and whether directly or by lease or any other arrange-
29 ment, transports passengers or property over the
30 highways in this state by motor vehicles for hire; (g) the
31 term "motor carrier" includes both a common carrier by
32 motor vehicle and a contract carrier by motor vehicle;
33 (h) the term "exempt carrier" means any person
34 operating a motor vehicle exempt from the provisions
35 of this chapter under section three thereof; (i) the term
36 "power unit" means any vehicle which contains within
37 itself the engine, motor or other source of power by
38 which said vehicle is propelled; (j) the letters "I.C.C."
39 mean the interstate commerce commission; (k) the
40 words "driveaway operation" mean an operation in
41 which any vehicle or vehicles, operated singly or in
42 lawful combinations, new or used, not owned by the
43 transporting motor carrier, constitute the commodity
44 being transported; (l) the letters "NARUC" mean the
45 national association of regulatory utility commissioners;
46 (m) the term "operations within the borders of this state"
47 means interstate or foreign operations to, from, within
48 or traversing this state; (n) the term "private commer-
49 cial carrier" means and includes any person who
50 undertakes, whether directly or by lease or other
51 arrangement, to transport property, including hazard-
52 ous materials as defined in rules and regulations
53 promulgated by the commission, for himself over the
54 interstate highways of this state, in interstate or
55 intrastate commerce, for any commercial purpose, by
56 truck tractor, semitrailer or full trailer, as hereinbelow

57 defined: *Provided*, That this term shall not include
58 carriers of heavy equipment, used in excavation or
59 construction, by low-bed trailers, to or from construction
60 sites; (o) the term "truck tractor" means a self-propelled
61 motor vehicle designed and used primarily for drawing
62 other vehicles and not so constructed as to carry a load
63 other than a part of the weight of the vehicle and load
64 so drawn; (p) the term "semitrailer" means any motor
65 vehicle other than a "pole trailer," with or without
66 motive power, designed to be drawn by another motor
67 vehicle and so constructed that some part of its weight
68 rests upon the towing vehicle; (q) the term "full trailer"
69 means any motor vehicle, with or without motive power,
70 other than a "pole trailer," designed to be drawn by
71 another motor vehicle and so constructed that no part
72 of its weight except the towing device rests upon the
73 towing vehicle. A semitrailer equipped with an auxil-
74 iary front axle (dolly) shall be deemed to be a "full
75 trailer."

**ARTICLE 4. PRIVATE COMMERCIAL CARRIERS OF PROPERTY
BY MOTOR VEHICLE.**

§24A-4-1. Vehicular and operational safety.

1 Every private commercial carrier, as defined in
2 section two (n), article one of this chapter, shall
3 establish, maintain and operate its motor vehicles in a
4 safe manner and condition as prescribed by the safety
5 rules and regulations promulgated by the commission
6 under subsection (j), section five, article five of this
7 chapter.

CHAPTER 112

(H. B. 2399—By Delegate Love)

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

AN ACT to amend and reenact sections one, two, three, four, six, seven and eight, article twenty-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to vaccination of

dogs and cats for rabies; purpose and policy; vaccination record and report; vaccination tag and certificate; offenses and penalties; enforcement of article; vaccinated dogs and cats may run at large; and confinement may be required.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20A. VACCINATION OF DOGS AND CATS FOR RABIES.

§19-20A-1. Purpose and policy.

§19-20A-2. Vaccination of dogs and cats.

§19-20A-3. Vaccination record and report.

§19-20A-4. Vaccination tag and certificate.

§19-20A-6. Offenses and penalties.

§19-20A-7. Enforcement of article.

§19-20A-8. Vaccinated dogs and cats may run at large; confinement may be required.

§19-20A-1. Purpose and policy.

1 The purpose of this article is to establish a rabies
2 vaccination procedure for dogs and cats and to check the
3 spread of rabies for the immediate preservation of life,
4 health and safety for the reason that rabies is spreading
5 among dogs and cats, and becoming a menace and
6 danger to people, livestock, poultry and game, and the
7 provisions herein are designated to prevent the spread
8 of rabies.

§19-20A-2. Vaccination of dogs and cats.

1 Whoever owns, keeps or harbors a dog or cat within
2 the boundaries of any county in the state of West
3 Virginia shall, on or before the first day of June, one
4 thousand nine hundred eighty-seven, have such dog or
5 cat properly vaccinated or immunized against rabies
6 with a vaccine capable of producing immunity for two
7 years and shall every second year thereafter have such
8 dog or cat revaccinated with a vaccine capable of
9 producing immunity for two years. After the first day
10 of June, one thousand nine hundred eighty-seven,
11 whoever obtains an unvaccinated dog or cat shall at once

12 have such dog or cat properly vaccinated against rabies
13 with a vaccine capable of producing immunity for two
14 years and shall have such vaccination repeated every
15 second year with a vaccine capable of producing
16 immunity for two years: *Provided*, That dogs and cats
17 need not be vaccinated before the age of three months,
18 but must be vaccinated by the age of six months:
19 *Provided, however*, That dogs and cats entering the state
20 of West Virginia temporarily cannot be kept and
21 maintained within the state of West Virginia for a
22 period of more than thirty days unless properly vacci-
23 nated. Anyone owning a dog or cat can have them
24 vaccinated by any veterinarian or person working with
25 or under such veterinarian, or if there be no resident
26 veterinarian in the county, by such other qualified
27 person as may be appointed by the county commission,
28 who shall work under the supervision of the county
29 health department.

§19-20A-3. Vaccination record and report.

1 Whoever vaccinates or revaccinates a dog or cat
2 against rabies shall keep a record of such vaccination
3 or revaccination, and on or before the first day of each
4 calendar month thereafter, shall mail to or deliver to the
5 county clerk of the county where the vaccination takes
6 place a report of such vaccination or revaccination
7 which shall include a number identifying the individual
8 record of the dog or cat vaccinated, a complete descrip-
9 tion of the dog or cat, place where the dog or cat is kept
10 or harbored, name of the owner, keeper or harborer, his
11 or her address, date and type of vaccination or revac-
12 cination and such other information as may be required
13 by the county health department or the county commis-
14 sion over the signature of the person reporting.

§19-20A-4. Vaccination tag and certificate.

1 There shall be provided by the state department of
2 agriculture uniform certificates to be approved by the
3 commissioner of agriculture, and which shall be
4 furnished to each county so that the veterinarian or
5 doctor of medicine, or the person vaccinating each
6 animal can make his proper reports, and he shall retain

7 one for himself, give a certificate to the owner for whom
8 he does the work, and file one copy with the clerk of the
9 county commission. Tags to be furnished by the county
10 commission shall be of a distinctive and easily recog-
11 nized color, and shall have thereon engraved, or
12 stamped, the year of vaccination and the number
13 indicating the record above described. Such tag shall be
14 securely fastened to the collar worn by the dog and shall
15 be given to the owner by the veterinarian, the doctor of
16 medicine or the person vaccinating the dog or cat at the
17 time of vaccination.

§19-20A-6. Offenses and penalties.

1 Whoever owns, keeps or harbors a dog or cat and fails
2 to have such dog or cat vaccinated or revaccinated
3 against rabies, and whoever vaccinates a dog or cat
4 against rabies and fails or refuses to keep and report
5 the required record of such vaccination, or fails or
6 refuses to provide the required tag, or whoever obstructs
7 or interferes in any way with the enforcement of any
8 section of this article shall, upon conviction, be fined not
9 less than ten dollars nor more than fifty dollars, or be
10 confined in the county jail not less than ten days nor
11 more than sixty days, or both.

§19-20A-7. Enforcement of article.

1 The enforcement of the provisions of this article shall
2 be in the hands of the sheriff of each county, any of his
3 deputies, constables, conservation commission officers,
4 commonly known as game wardens, and, if deemed
5 necessary, there shall be a special officer to be appointed
6 by the county commission, who is authorized, empow-
7 ered, and directed to inspect rabies, pick up dogs and
8 cats and dispose of dogs which are not taxable or not
9 vaccinated according to this article. The sheriff of each
10 county can have one or more sittings, if deemed
11 necessary, in each district of the county, at which he
12 shall be present or have present one of his deputies or
13 the special officer above provided for, to take charge of
14 all delinquent dogs and cats and homeless dogs and cats
15 that are not vaccinated. The assessor of each county, or
16 one of his deputies, shall accompany the veterinarian,

17 doctor, or the one who administers the vaccine in these
18 sittings for the purpose of collecting taxes on dogs. All
19 dogs which are not vaccinated and for which taxes are
20 unpaid shall become the responsibility of the sheriff to
21 catch and dispose of as is provided by law.

**§19-20A-8. Vaccinated dogs and cats may run at large;
confinement may be required.**

1 Dogs or cats vaccinated in compliance with the
2 provisions of this article may run at large in any area
3 or locality, subject to any quarantine established by the
4 commissioner of agriculture pursuant to article nine of
5 this chapter, but the commissioner may, in his discre-
6 tion, require all such vaccinated dogs and cats, as well
7 as dogs and cats not vaccinated, within the limits of any
8 such quarantined area or locality to be confined as
9 provided in said article nine.

CHAPTER 113

(Com. Sub. for S. B. 226—By Senators Sharpe, Palumbo and Shaw)

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

AN ACT to amend and reenact sections one and ten, article one-h, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enacting the Appalachian States Low-Level Radioactive Waste Compact and amending same; and fiscal implementation.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 1H. APPALACHIAN STATES LOW-LEVEL RADIOAC-
TIVE WASTE COMPACT.**

§29-1H-1. Appalachian states low-level radioactive waste compact approved.
§29-1H-10. Fiscal implementation.

§29-1H-1. Appalachian states low-level radioactive waste compact approved.

1 The following Appalachian States Low-Level
2 Radioactive Waste Compact, which has been negotiated
3 by representatives of the Commonwealth of Pennsylvania,
4 and the states of West Virginia, Delaware and
5 Maryland, is hereby approved, ratified, adopted,
6 enacted into law, and entered into by the state of West
7 Virginia as a party state thereto, namely:

8 APPALACHIAN STATES LOW-LEVEL
9 RADIOACTIVE WASTE COMPACT
10 **Preamble**

11 WHEREAS, The United States Congress, by enacting
12 the Low-Level Radioactive Waste Policy Act (42 U.S.C.
13 Sections 2021b-2021d) has encouraged the use of
14 interstate compacts to provide for the establishment and
15 operation of facilities for regional management of low-
16 level radioactive waste; and

17 WHEREAS, Under section 4 (a) (1) (A) of the Low-Level
18 Radioactive Waste Policy Act (42 U.S.C. Sections 2021
19 (a) (1) (A)), each state is responsible for providing for
20 the capacity for disposal of low-level radioactive waste
21 generated within its borders; and

22 WHEREAS, To promote the health, safety and welfare
23 of residents within the Commonwealth of Pennsylvania
24 and the states of West Virginia, Delaware and
25 Maryland, the aforementioned states wish to enter into
26 a compact for the regional management of low-level
27 radioactive waste;

28 Now, therefore, the Commonwealth of Pennsylvania
29 and the states of West Virginia, Delaware and Maryland
30 hereby agree to enter into the Appalachian States Low-
31 Level Radioactive Waste Compact.

32 **Article 1**
33 **Definitions**

34 As used in this Compact, unless the context clearly
35 indicates otherwise:

36 (a) "Broker" means any intermediate person who

37 handles, treats, processes, stores, packages, ships or
38 otherwise has responsibility for or possesses low-level
39 waste obtained from a generator.

40 (b) "Carrier" means a person who transports low-level
41 waste to a regional facility.

42 (c) "Commission" means the Appalachian States Low-
43 Level Radioactive Waste Commission.

44 (d) "Disposal" means the isolation of low-level waste
45 from the biosphere.

46 (e) "Facility" means any real or personal property,
47 within the region, and improvements thereof or thereon,
48 and any and all plant, structures, machinery and
49 equipment, acquired, constructed, operated or
50 maintained for the management or disposal of low-level
51 waste.

52 (f) "Generate" means to produce low-level waste
53 requiring disposal.

54 (g) "Generator" means a person whose activity results
55 in the production of low-level waste requiring disposal.

56 (h) "Hazardous life" means the time required for
57 radioactive materials to decay to safe levels, as defined
58 by the time period for the concentration of radioactive
59 materials within a given container or package to decay
60 to maximum permissible concentrations as defined by
61 federal law or by standards to be set by a host state,
62 whichever is more restrictive.

63 (i) "Host state" means Pennsylvania or any other party
64 state so designated by the Commission in accordance
65 with Article 3 of this Compact.

66 (j) "Institutional control period" means the time of the
67 continued observation, monitoring and care of the
68 regional facility following transfer of control from the
69 operator to the custodial agency.

70 (k) "Low-level waste" means radioactive waste that:

71 (1) Is neither high-level waste or transuranic waste,
72 nor spent nuclear fuel, nor by-product material as
73 defined in Section 11 (e)(2) of the Atomic Energy Act
74 of 1954, as amended; and

75 (2) Is classified by the federal government as low-level
76 waste, consistent with existing law; but does not include
77 waste generated as a result of atomic energy defense
78 activities of the federal government, as defined in Public
79 Law 96-573, or federal research and development
80 activities.

81 (l) "Management" means the reduction, collection,
82 consolidation, storage, packaging or treatment of low-
83 level waste.

84 (m) "Operator" means a person who operates a
85 regional facility.

86 (n) "Party state" means any state that has become a
87 party in accordance with Article 5 of this Compact.

88 (o) "Person" means an individual, corporation, part-
89 nership or other legal entity, whether public or private.

90 (p) "Region" means the combined geographical area
91 within the boundaries of the party states.

92 (q) "Regional facility" means a facility within any
93 party state which has been approved by the Commission
94 for the disposal of low-level waste.

95 (r) "Shallow-land burial" means the disposal of low-
96 level radioactive waste directly in subsurface trenches
97 without additional confinement in engineered structures
98 or by proper packaging in containers as determined by
99 the law of the host state.

100 (s) "Transuranic waste" means low-level waste con-
101 taining radionuclides with an atomic number greater
102 than 92 which are excluded from shallow-land burial by
103 the federal government.

104 **Article 2**
105 **The Commission**

106 (A) Creation and Organization.

107 (1) Creation — There is hereby created the Appalach-
108 ian States Low-Level Radioactive Waste Commission.
109 The Commission is hereby created as a body corporate

110 and politic, with succession for the duration of this
111 Compact, as an agency and instrumentality of the
112 governments of the respective signatory parties, but
113 separate and distinct from the respective signatory
114 party states. The Commission shall have central offices
115 located in Pennsylvania.

116 (2) Commission Membership — The Commission shall
117 consist of two voting members from each party state to
118 be appointed according to the laws of each party state,
119 and two additional voting members from each host state
120 to be appointed according to the laws of each host state.
121 Upon selection of the site of the regional facility, an
122 additional voting member shall be appointed to the
123 Commission who shall be a resident of the county or
124 municipality where the facility is to be located. The
125 appointing authority of each party state shall notify the
126 Commission in writing of the identities of the members
127 and of any alternates. An alternate may vote and act in
128 the member's absence. No member shall have a finan-
129 cial interest in any industry which generates low-level
130 radioactive waste, any low-level radioactive waste
131 regional facility or any related industry for the duration
132 of the member's term. No more than one half the
133 members and alternates from any party state shall have
134 been employed by or be employed by a low-level waste
135 generator or related industry upon appointment to or
136 during their tenure of office: *Provided*, That no member
137 shall have been employed by or be employed by a
138 regional facility operator. No member or alternate from
139 any party state shall accept employment from any
140 regional facility operator or brokers for at least three
141 years after leaving office.

142 (3) Compensation — Members of the Commission and
143 alternates shall serve without compensation from the
144 Commission but may be reimbursed for necessary
145 expenses incurred in and incident to the performance of
146 their duties.

147 (4) Voting Power — Each Commission member is
148 entitled to one vote. Unless otherwise provided in this
149 Compact, affirmative votes by a majority of a host state's
150 members are necessary for the Commission to take any

151 action related to the regional facility and the disposal
152 and management of low-level waste within that host
153 state.

154 (5) Organization and Procedure.

155 (a) The Commission shall provide for its own organ-
156 ization and procedures, and shall adopt bylaws not
157 inconsistent with this Compact and any rules and
158 regulations necessary to implement this Compact. It
159 shall meet at least once a year in the county selected to
160 host a regional facility and shall elect a chairman and
161 vice chairman from among its members. In the absence
162 of the chairman, the vice chairman shall serve.

163 (b) All meetings of the Commission shall be open to
164 the public with at least fourteen days advance notice,
165 except that the chairman may convene an emergency
166 meeting with less advance notice. Each municipality
167 and county selected to host a regional facility shall be
168 specifically notified in advance of all Commission
169 meetings. All meetings of the Commission shall be
170 conducted in a manner that substantially conforms to
171 the federal Administrative Procedure Act. The Commis-
172 sion may, by a two-thirds vote, including approval of a
173 majority of each host state's Commission members, hold
174 an Executive Session closed to the public for the purpose
175 of: Considering or discussing legally privileged or
176 proprietary information; to consider dismissal, disciplin-
177 ing of, or hearing complaints or charges brought against
178 an employee or other public agent unless such person
179 requests such public hearing; or to consult with its
180 attorney regarding information or strategy in
181 connection with specific litigation. The reason for the
182 Executive Session must be announced at least fourteen
183 days prior to the Executive Session except that the
184 chairman may convene an emergency meeting with less
185 advance notice in which case the reason for the
186 Executive Session must be announced at the open
187 meeting immediately subsequent to the Executive
188 Session. All action taken in violation of this open
189 meeting provision shall be null and void.

190 (c) Detailed written minutes shall be kept of all

191 meetings of the Commission. All decisions, files, records
192 and data of the Commission except for information
193 privileged against introduction in judicial proceedings,
194 personnel records, and minutes of a properly convened
195 Executive Session shall be open to public inspection
196 subject to a procedure that substantially conforms to the
197 Freedom of Information Act (Public Law 89-554, 5
198 U.S.C. 552) and applicable West Virginia law, and may
199 be copied upon request and payment of fees which shall
200 be no higher than necessary to recover copying costs.

201 (d) The Commission shall select an appropriate staff,
202 including an executive director, to carry out the duties
203 and functions assigned by the Commission.
204 Notwithstanding any other provision of law the Commis-
205 sion may hire and/or retain its own legal counsel.

206 (e) Any person aggrieved by a final decision of the
207 Commission which adversely affects the legal rights,
208 duties or privileges of such person, may petition a court
209 of competent jurisdiction, within sixty days after the
210 Commission's final decision, to obtain judicial review of
211 said final decisions.

212 (f) Liabilities of the Commission shall not be deemed
213 liabilities of the party states. Members of the Commis-
214 sion shall not be personally liable for actions taken in
215 their official capacity.

216 (B) Powers and Duties.

217 (1) The Commission:

218 (a) Shall conduct research and establish regulations to
219 promote a reasonable reduction of volume and curie
220 content of low-level wastes generated in the region. The
221 regulations shall be reviewed and, if necessary, revised
222 by the Commission at least annually.

223 (b) Shall ensure, to the extent authorized by federal
224 law, that low-level wastes are safely disposed of within
225 the region, except that the Commission shall have no
226 power or authority to license, regulate or otherwise
227 develop a regional facility, such powers and authority
228 being reserved for the host state(s) as permitted under
229 the law.

230 (c) Shall designate as "host states" any party state
231 which generates twenty-five percent or more of Pennsyl-
232 vania's volume or total curie content of low-level waste
233 generated based on a comparison of averages over three
234 successive years, as determined by the Commission. This
235 determination shall be based on volume or total curie
236 content, whichever is greater.

237 (d) Shall ensure, to the extent authorized by federal
238 law, that low-level waste packages brought into the
239 regional facility for disposal conform to applicable state
240 and federal regulations. Low-level waste brokers or
241 generators who violate these regulations will be subject
242 to a fine or other penalty imposed by the Commission,
243 including restricted access to a regional facility. The
244 Commission may impose such fines and/or penalties in
245 addition to any other penalty levied by the party states
246 pursuant to Article 4(D).

247 (e) Shall establish such advisory committees as it
248 deems necessary for the purpose of advising the
249 Commission on matters pertaining to the management
250 and disposal of low-level waste.

251 (f) May contract to accomplish its duties and effectuate
252 its powers subject to projected available resources.
253 No contract made by the Commission shall bind a party
254 state.

255 (g) Shall prepare contingency plans for management
256 and disposal of low-level waste in the event any regional
257 facility should be closed or otherwise unavailable.

258 (h) Shall examine all records of operators of regional
259 facilities pertaining to operating costs, profits or the
260 assessment or collection of any charge, fee or surcharge,
261 and may make recommendations to the host state(s)
262 which shall review the recommendations in accordance
263 with its (their) own sovereign laws.

264 (i) Shall have the power to sue and be sued subject
265 to Article 2 (A) (5) (e) and may seek to intervene in any
266 administrative or judicial proceeding.

267 (j) Shall assemble and make available to the party
268 states and to the public, information concerning low-

269 level waste management and disposal needs, technolo-
270 gies and problems.

271 (k) Shall keep current and annual inventories of all
272 generators by name and quantity of low-level waste
273 generated within the region, based upon information
274 provided by the party states. Inventory information
275 shall include both volume in cubic feet and total curie
276 content of the low-level waste and all available informa-
277 tion on chemical composition and toxicity of such wastes.

278 (l) Shall keep an inventory of all regional facilities and
279 specialized facilities, including, but not necessarily
280 restricted to, information on their size, capacity, and
281 location, as well as specific wastes capable of being
282 managed, and the projected useful life of each regional
283 facility.

284 (m) Shall make and publish an annual report to the
285 governors of the signatory party states and to the public
286 detailing its programs, operations and finances,
287 including copies of the annual budget and the
288 independent audit required by this Compact.

289 (n) Notwithstanding any other provision of this
290 Compact to the contrary, may, with the unanimous
291 approval of the Commission members of the host
292 state(s), enter into temporary agreements with nonparty
293 states or other regional boards for the emergency
294 disposal of low-level waste at the regional facility, if so
295 authorized by law(s) of the host state(s), or other disposal
296 facilities located in states that are not parties to this
297 agreement.

298 (o) Shall promulgate regulations, pursuant to host
299 state law, to specifically govern and define exactly what
300 would constitute an emergency situation and exactly
301 what restrictions and limitations would be placed on
302 temporary agreements.

303 (p) Shall not accept any donations, grants, equipment,
304 supplies, materials or services, conditional or otherwise,
305 from any source, except from any federal agency and
306 from party states which are certified as being legal and
307 proper under the laws of the donating party state.

308 (C) Budget and Operation.

309 (1) The Commission shall establish a fiscal year which
310 conforms to the fiscal year of the Commonwealth of
311 Pennsylvania.

312 (2) Upon legislative enactment of this Compact by two
313 party states and each year until the regional facility
314 becomes available, the Commission shall adopt a current
315 expense budget for its fiscal year. The budget shall
316 include the Commission's estimated expenses for
317 administration. Such expenses shall be allocated to the
318 party states according to the following formula:

319 Each designated initial host state will be allocated
320 costs equal to twice the costs of the other party states,
321 but such costs will not exceed two hundred thousand
322 dollars.

323 Each remaining party state will be allocated a cost of
324 one half the cost of the initial host state, but such costs
325 will not exceed one hundred thousand dollars.

326 The party states will include the amounts allocated
327 above in their respective budgets, subject to such review
328 and approval as may be required by their respective
329 budgetary processes. Such amounts shall be due and
330 payable to the Commission in quarterly installments
331 during the fiscal year.

332 (3) For continued funding of its activities, the
333 Commission shall submit an annual budget request to
334 each party state for funding, based upon the percentage
335 of the region's waste generated in each state in the
336 region, as reported in the latest available annual
337 inventory required under Article 2 (B) (1) (k). The
338 percentage of waste shall be based on volume of waste
339 or total curie content as determined by the Commission.

340 (4) The Commission shall prepare and include in the
341 annual report a budget showing anticipated receipts and
342 disbursements for the ensuing year.

343 (5) Annual Independent Audit.

344 (a) As soon as practicable after the closing of the fiscal
345 year, an audit shall be made of the financial accounts

346 of the Commission. The audit shall be made by qualified
347 certified public accountants selected by the Commission,
348 who have no personal direct or indirect interest in the
349 financial affairs of the Commission or any of its officers
350 or employees. The report of audit shall be prepared in
351 accordance with accepted accounting practices and shall
352 be filed with the chairman and such other officers as
353 the Commission shall direct. Copies of the report shall
354 be distributed to each Commission member and shall be
355 made available for public distribution.

356 (b) Each signatory party by its duly authorized
357 officers shall be entitled to examine and audit at any
358 time all of the books, documents, records, files and
359 accounts and all other papers, things or property of the
360 Commission. The representatives of the signatory
361 parties shall have access to all books, documents,
362 records, accounts, reports, files and all other papers,
363 things or property belonging to or in use by the
364 Commission and necessary to facilitate the audit; and,
365 they shall be afforded full facilities for verifying
366 transactions with the balances or securities held by
367 depositaries, fiscal agents and custodians.

368
369
370

Article 3
Rights, Responsibilities
and Obligations of Party States

371 (A) There shall be regional facilities sufficient to
372 dispose of the low-level waste generated within the
373 region. Each regional facility shall be capable of
374 disposing of such low-level waste but in the form(s)
375 required by regulations or license conditions.
376 Specialized facilities for particular types of low-level
377 waste management reduction or treatment may not be
378 developed in any party state unless they are in accor-
379 dance with the laws and regulations of such state and
380 applicable federal laws and regulations.

381 (B) Each party state shall have equal access as other
382 party states to regional facilities located within the
383 region and accepting low-level waste: *Provided*, That the
384 host state may close the regional facility located within
385 its borders when necessary for public health and safety.

386 However, a host state shall send notification to the
387 Commission in writing within three (3) days of its
388 action, and shall, within thirty (30) working days,
389 provide in writing the reasons for the closing.

390 (C) Pennsylvania and party states which generated
391 twenty-five percent or more of the volume or curies of
392 low-level waste generated by Pennsylvania based on a
393 comparison of averages over the three years, one
394 thousand nine hundred eighty-two through one thousand
395 nine hundred eighty-four, are designated as "initial host
396 states" and are required to develop and host low-level
397 waste sites as regional facilities. The percentage of
398 waste from each state shall be determined by cubic foot
399 volume or total curie content, whichever is greater.

400 (D) Party states which generated less than twenty-five
401 percent of the volume or curies of low-level waste
402 generated by Pennsylvania based on a comparison of
403 averages over the years one thousand nine hundred
404 eighty-two through one thousand nine hundred eighty-
405 four shall be exempt from initial host state
406 responsibilities. These states shall continue to be exempt
407 as long as they generate less than the twenty-five
408 percent threshold over successive three-year periods.
409 Once a state generates an average of twenty-five percent
410 or more of the volume or curies generated by Pennsyl-
411 vania over a successive three-year period, it shall be
412 designated as a "host state" for a thirty-year period by
413 the Commission and shall immediately initiate develop-
414 ment of a regional facility to be operational within five
415 years. Such host state shall be prepared to accept at its
416 regional facility low-level waste at least equal to that
417 generated in the state. With Commission approval, any
418 party state may volunteer to host a regional facility. The
419 percentage of waste from each state shall be determined
420 by either a cubic foot volume or total curie content,
421 whichever is greater.

422 (E) Pennsylvania and other host states are obligated
423 to develop regional facilities for the duration of this
424 Compact. All regional facilities shall be designed for at
425 least a thirty-year useful life. At the end of the facility's
426 life, normal closure and maintenance procedures shall

427 be initiated in accordance with the applicable require-
428 ments of the host state and the federal government.
429 Each host state's obligation for operating regional
430 facilities shall remain as long as the state continues to
431 produce over a three-year period twenty-five percent or
432 more of the volume or curies of low-level waste gener-
433 ated by Pennsylvania.

434 (F) Each host state shall:

435 (1) Cause a regional facility to be sited and developed
436 on a timely basis.

437 (2) Ensure by law, consistent with applicable state and
438 federal law, the protection and preservation of public
439 health, safety and environmental quality in the siting,
440 design, development, licensure or other regulation,
441 operation, closure, decommissioning long-term care and
442 the institutional control period of the regional facility
443 within the state. To the extent authorized by federal
444 law, a host state may adopt more stringent laws, rules
445 or regulations than required by federal law.

446 (3) Ensure and maintain a manifest system which
447 documents all waste-related activities of generators,
448 brokers, carriers and related activities of generators,
449 brokers, carriers and operators, and establish the chain
450 of custody of waste from its initial generation to the end
451 of its hazardous life. Copies of all such manifests shall
452 be submitted to the Commission on a timely basis.

453 (4) Ensure that charges for disposal of low-level waste
454 at the regional facility are sufficient to fully fund the
455 safe disposal and perpetual care of the regional facility
456 and that charges are assessed without discrimination as
457 to the party state of origin.

458 (5) Submit an annual report to the Commission on the
459 status of the regional facility which contains projections
460 of the anticipated future capacity.

461 (6) Notify the Commission immediately if any
462 exigency arises requiring the possible temporary or
463 permanent closure of a regional facility within the state
464 at a time earlier than was projected in the state's most
465 recent annual report to the Commission.

466 (7) Require that the institutional control period of any
467 disposal facility be at least as long as the hazardous life,
468 as defined in Article 1(h), of the radioactive materials
469 that are disposed at that facility.

470 (8) Prohibit the use of any shallow land burial, as
471 defined in Article 1(r), and develop alternative means
472 for treatment, storage and disposal of low-level waste.

473 (9) Establish by law, to the extent not prohibited by
474 federal law, requirements for financial responsibility,
475 including, but not limited to:

476 (a) Requirements for the purchase and maintenance
477 of adequate insurance by generators, brokers, carriers
478 and operators of the regional facility;

479 (b) Requirements for the establishment of a long-term
480 care fund to be funded by a fee placed on generators
481 to pay for preventive or corrective measures of low-level
482 waste to the regional facility; and

483 (c) Any further financial responsibility requirements
484 that shall be submitted by generators, brokers, carriers
485 and operators as deemed necessary by the host state.

486 (G) Each party state:

487 (1) Shall appropriate its portion of the Commission's
488 initial and annual budgets as set out in Article 2 (C) (2)
489 and (3).

490 (2) To the extent authorized by federal law, shall
491 develop and enforce procedures requiring low-level
492 waste shipments originating within its borders and
493 destined for a regional facility to conform to volume
494 reduction, packaging and transportation requirements
495 and regulations as well as any other requirements
496 specified by the regional facility. Such procedures shall
497 include, but are not limited to:

498 (i) Periodic inspections of packaging and shipping
499 practices;

500 (ii) Periodic inspections of low-level waste containers
501 while in custody of carriers; and

502 (iii) Appropriate enforcement actions with respect to
503 violations.

504 (3) To the extent authorized by federal law, shall after
505 receiving notification from a host state, or other person,
506 that a person in a party state has violated volume
507 reduction, packaging, shipping or transportation re-
508 quirements or regulations, take appropriate action to
509 ensure that violations do not recur. Appropriate action
510 shall include, but is not limited to, the requirement that
511 a bond be posted by the violator to pay the cost of
512 repackaging at the regional facility and the requirement
513 that future shipments be inspected. Appropriate action
514 may also include suspension of the violator's use of the
515 regional facility. Should such suspension be imposed, the
516 suspension shall remain in effect until such time as the
517 violator has, to the satisfaction of the party state
518 imposing such suspension, complied with the approp-
519 riate requirements or regulations upon which the
520 suspension was based and has taken appropriate action
521 to ensure that such violation or violations do not recur.

522 (4) Shall maintain a registry of all generators and
523 quantities generated within the state.

524 (H) In the event of liability arising from the operation
525 of any regional facility and during and after closure of
526 that facility, each party state shall share in that liability
527 in an amount equal to that state's share of the region's
528 low-level waste disposed of at the facility. If such
529 liability arises from negligence, malfeasance or neglect
530 on the part of a host state or any party state, then any
531 other host or party state(s) may make any claim
532 allowable under law for that negligence, malfeasance or
533 neglect. If such liability arises from a particular waste
534 shipment or shipments to, or quantity of waste or
535 condition at, the regional facility, then any host or party
536 state may make any claim allowable under law for such
537 liability. The percentage of waste shall be based on
538 volume of waste or total curie content.

539 (I) A party state which fails to fulfill its obligations,
540 including timely funding of the Commission may have
541 its privileges under the Compact suspended or its
542 membership in the Compact revoked by the Commission

543 and be subject to any other legal and equitable remedies
544 available to the party states.

545

Article 4

546

Prohibited Acts and Penalties

547 (A) It shall be unlawful for any person to dispose of
548 low-level waste within the region except at a regional
549 facility unless authorized by the Commission.

550 (B) After establishment of the regional facility or
551 facilities, it shall be unlawful for any person to dispose
552 of any low-level waste within the region unless the waste
553 was generated within the region or unless authorized to
554 do so both by the Commission and by law of the host
555 state in which said disposal takes place. For the
556 purposes of this Compact, waste generated within the
557 region excludes radioactive material shipped from
558 outside the party states to a waste management facility
559 within the region. In determining whether to grant such
560 authorization, the factors to be considered by the
561 Commission shall include, but not be limited to, the
562 following:

563 (1) The impact on the health, safety and environmen-
564 tal quality of the citizens of the party states;

565 (2) The impact of importing waste on the available
566 capacity and projected life of the regional facility;

567 (3) The availability of a regional facility appropriate
568 for the safe disposal of the type of low-level waste
569 involved.

570 (C) Any and all low-level waste generated within the
571 region shall be disposed of at a regional facility, except
572 for specific cases agreed upon by the Commission, with
573 the affirmative votes by a majority of the Commission
574 members of the host state(s) affected by the decision.

575 (D) Generators, brokers and carriers of wastes, and
576 owners and operators of sites shall be liable for their
577 acts, omissions, conduct or relationships in accordance
578 with all laws relating thereto. The party states shall
579 impose a fine for any violation in an amount equal to
580 the present and future costs associated with correcting

581 any harm caused by the violation and shall assess
582 punitive fines or penalties if it is deemed necessary. In
583 addition, the host state shall bar any person who violates
584 host state or federal regulations from using the regional
585 facility until that person demonstrates to the satisfaction
586 of the host state their ability and willingness to comply
587 with the law.

588 (E) No commissioner, officer or employee shall:

589 (1) Be financially interested, either directly or
590 indirectly, in a contract, sale, purchase, lease or transfer
591 of real or personal property to which the Commission
592 is a party.

593 (2) Solicit or accept money or any other thing of value
594 in addition to the expenses paid to him by the Commis-
595 sion for services performed within the scope of his
596 official duties.

597 (3) Offer money or anything of value for or in
598 consideration of obtaining an appointment, promotion or
599 privilege in his employment with the Commission.

600 (F) Any officer or employee who shall willfully violate
601 any of the provisions of this article shall forfeit his office
602 or employment.

603 (G) Any contract or agreement knowingly made in
604 contravention of this section is void.

605 (H) Officers and employees of the Commission shall be
606 subject, in addition to the provisions of this section, to
607 such criminal and civil sanctions for misconduct in
608 office as may be imposed by federal law and the law of
609 the signatory state in which such misconduct occurs.

610 **Article 5**
611 **Eligibility, Entry into Effect,**
612 **Congressional Consent, Withdrawal**

613 (A) Only the states of Pennsylvania, West Virginia,
614 Delaware and Maryland are eligible to become parties
615 to this Compact.

616 (B) An eligible state may become a party state by
617 legislative enactment of this Compact or by executive

618 order of the governor adopting this Compact: *Provided,*
619 That a state becoming a party state by executive order
620 shall cease to be a party state upon adjournment of the
621 first general session of its legislature convened thereaf-
622 ter, unless the legislature shall have enacted this
623 Compact before such adjournment.

624 (C) This Compact shall take effect when it has been
625 enacted by the legislatures of Pennsylvania and one or
626 more eligible states. However, subsections (B) and (C)
627 of Article 4 shall not take effect until Congress has
628 consented to this Compact. Every fifth year after such
629 consent has been given, Congress may withdraw
630 consent.

631 (D) A party state may withdraw from the Compact by
632 repealing the enactment of this Compact, but no such
633 withdrawal shall become effective until two years after
634 enactment of the repealing legislation. If the withdraw-
635 ing state is a host state, any regional facility in that state
636 shall remain available to receive low-level waste
637 generated within the region until five years after the
638 effective date of the withdrawal.

639

Article 6

640

Construction and Severability

641 (A) The provisions of this Compact shall be broadly
642 construed to carry out the purposes of the Compact, but
643 the sovereign powers of a party state shall not unneces-
644 sarily be infringed.

645 (B) If any part or application of this Compact is held
646 invalid, the remainder, or its application to other
647 situations or persons, shall not be affected.

§29-1H-10. Fiscal implementation.

1 The term "budgetary processes" in Article 2(C)(2) of
2 the Compact shall be construed to include the presen-
3 tation by the Commission of its proposed budget for each
4 fiscal period to the budget office of the department of
5 finance and administration for study and consideration,
6 and each such budget shall include a statement of
7 moneys required to administer, manage and support the
8 Commission during the ensuing fiscal period. The

9 statement shall include any request for appropriation of
10 funds by the state of West Virginia and shall be
11 accompanied by a tabulation of similar requests which
12 the Commission makes or expects to make to each other
13 signatory party, and the formula or factors upon which
14 such respective requests are based. The governor is
15 authorized to take such action as may be necessary and
16 proper in his discretion to effectuate the Compact, and
17 the initial organization and operation of the Commis-
18 sion, and the Legislature may appropriate such funds as
19 it considers necessary to carry out the provisions of this
20 article.

CHAPTER 114

(Com. Sub. for H. B. 2273—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

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

AN ACT to amend and reenact section one, article eleven, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend article eleven of said chapter by adding thereto a new section, designated section one-a; to amend article twenty, chapter thirty-one of said code by adding thereto a new section, designated section twenty-five, all relating to municipalities; providing for the collection of minimum costs against certain defendants by municipal courts; payment of costs collected to the regional jail and prison development fund in the state treasury; requiring the regional jail and prison authority to comply with the provisions of the West Virginia Regional Jail and Prison Authority Act; completion of comprehensive plan; formation of regions; appointment of regional jail commissions; development of jail and prison standards; obtaining land for regional jails; consideration of consolidation of regional jail system with the state correctional system; and collection of moneys.

Be it enacted by the Legislature of West Virginia:

That section one, article eleven, chapter eight of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article eleven of said chapter be further amended by adding thereto a new section, designated section one-a; and that article twenty, chapter thirty-one of said code be amended by adding thereto a new section, designated section twenty-five, all to read as follows:

Chapter

8. Municipal Corporations.

31. Corporations.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.

§8-11-1. Ordinances to make municipal powers effective; penalties imposed under judgment of mayor or police court or municipal judge; right to injunctive relief; right to maintain action to collect fines against nonresidents.

§8-11-1a. Disposition of criminal costs into state treasury account for regional jail and prison development fund.

§8-11-1. Ordinances to make municipal powers effective; penalties imposed under judgment of mayor or police court or municipal judge; right to injunctive relief; right to maintain action to collect fines against nonresidents.

1 To carry into effect the powers and authority con-
 2 ferred upon any municipality or its governing body by
 3 the provisions of this chapter or any past or future act
 4 of the Legislature of this state, the governing body shall
 5 have plenary power and authority to make and pass all
 6 needful ordinances, orders, bylaws, acts, resolutions,
 7 rules and regulations, not contrary to the Constitution
 8 and laws of this state; and, for a violation thereof, to
 9 prescribe reasonable penalties in the form of fines,
 10 forfeitures and imprisonment in the county jail or the
 11 place of imprisonment in such municipality, if there be
 12 one, for a term not exceeding thirty days. Such fines,
 13 forfeitures and imprisonment shall be recovered,
 14 imposed or enforced under the judgment of the mayor
 15 of such municipality or the individual lawfully exercis-
 16 ing his functions, or the police court judge or municipal

17 court judge of a city, if there be one, and may be
18 suspended upon such reasonable conditions as may be
19 imposed by such mayor, other authorized individual or
20 judge. Any municipality may also maintain a civil action
21 in the name of the municipality in the circuit court of
22 the county in which the municipality or the major
23 portion of the territory thereof is located to obtain an
24 injunction to compel compliance with, or to enjoin a
25 violation or threatened violation of, any ordinance of
26 such municipality, and such circuit court shall have
27 jurisdiction to grant the relief sought. A certified
28 transcript of a judgment for a fine rendered by a
29 municipal court may be filed in the office of the clerk
30 of a circuit court and docketed in the judgment lien book
31 kept in the office of the clerk of the county commission
32 in the same manner and with the same effect as the
33 filing and docketing of a certified transcript of judg-
34 ment rendered by a magistrate court as provided for in
35 section two, article six, chapter fifty of this code. The
36 judgment shall include costs assessed against the
37 defendant. In addition to any other costs which may be
38 lawfully imposed, an additional cost shall be imposed in
39 an amount of not less than twenty-two dollars in each
40 proceeding, except that such additional cost shall not be
41 assessed for a traffic offense that is not a moving
42 violation or an offense for which the ordinance does not
43 provide for a period of incarceration. Of the twenty-two
44 dollars imposed as an additional cost, two dollars shall
45 be an administrative cost to be retained by the
46 municipality.

47 Execution shall be by fieri facias issued by the clerk
48 of the circuit court in the same manner as such writs
49 are issued on judgments for a fine rendered by circuit
50 courts or other courts of record under the provisions of
51 section eleven, article four, chapter sixty-two of this
52 code.

**§8-11-1a. Disposition of criminal costs into state treasury
account for regional jail and prison develop-
ment fund.**

1 The clerk of each municipal court or such person
2 designated to receive fines and costs shall at the end of

3 each month pay into the regional jail and prison
4 development fund in the state treasury an amount equal
5 to twenty dollars of the costs collected in each proceed-
6 ing except for traffic offenses that are not moving
7 violations: *Provided*, That in a case where a defendant
8 has failed to pay all costs assessed against him, no
9 payment shall be made to the regional jail and prison
10 development fund unless and until the defendant has
11 paid all costs which, when paid, are available for the use
12 and benefit of the municipality.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND PRISON AUTHORITY.

§31-20-25. Further duties of the authority.

1 The Legislature hereby finds that the regional jail and
2 prison authority has not complied with the provisions of
3 this article in certain areas and by this section imposes
4 further duties upon the authority in order to save the
5 taxpayers of this state unnecessary expense in the
6 development of the regional jail system.

7 No moneys shall be expended for regional jail
8 construction from the regional jail and development
9 fund and no final site selection for a regional jail shall
10 be made by the regional jail and prison authority until
11 (1) the regional jail commissions are formed and
12 activated under the provisions of section six, article
13 twenty, chapter thirty-one of this code, and (2) regional
14 jail commission representatives are named to the
15 regional jail and prison authority as provided for in
16 section three, article twenty, chapter thirty-one of this
17 code, and (3) the regional jail commission for the region
18 in which a jail is to be constructed submits the report
19 provided for under the provisions of section seven,
20 article twenty, chapter thirty-one of this code: *Provided*,
21 That this section shall not apply to the regional jail
22 commission previously established for the region
23 consisting of Berkeley, Morgan and Jefferson counties.

24 Notwithstanding any other provision of this article,
25 the regional jail and prison authority shall present a
26 written report to the joint committee on government and
27 finance of the Legislature no later than the meeting of

28 such committee in the month of December, one thousand
29 nine hundred eighty-seven, which will show that the
30 authority has done the following:

31 (a) Completed a comprehensive plan as required in
32 section five of this article;

33 (b) Specified which counties are to be formed into
34 regions as required in section five of this article;

35 (c) Appointed a regional jail commission in each
36 region as required by section six of this article;

37 (d) Developed through the jail and prison standards
38 commission, jail and prison standards as required by
39 section nine of this article;

40 (e) That the authority in obtaining or attempting to
41 obtain land or buildings for regional jail facilities has
42 considered all available options which will minimize
43 costs while maximizing the effectiveness of this article,
44 including, but not limited to, the option of obtaining
45 land through offers of such by county or local govern-
46 ments; and

47 (f) That the authority has developed plans which will
48 utilize regional jail facilities for the housing of convicted
49 felons who have committed nonviolent crimes. Such
50 plans are to provide that the convicted felons shall be
51 housed separately from those persons serving time for
52 misdemeanor offenses. The development of the plans
53 shall be a cooperative effort between the authority and
54 the department of corrections inasmuch as it is the
55 intent of the Legislature that the penal system of this
56 state shall be a consolidated system of both the regional
57 jail system and the state correctional institutions.

CHAPTER 115

(Com. Sub. for H. B. 2252—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

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

AN ACT to amend and reenact sections four and six, article two-b, chapter seventeen of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, relating to the toll road study commission; powers and duties of the commission; interpretation of article; extending the commission; and termination of the commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. TOLL ROAD STUDY COMMISSION.

§17-2B-4. Powers and duties of the commission.

§17-2B-6. Interpretation of article; termination of commission.

§17-2B-4. Powers and duties of the commission.

1 The commission shall have the following powers,
2 duties and responsibilities:

3 (a) To conduct a thorough and comprehensive study
4 into the various ways and means of financing the
5 construction and maintenance of a modern and efficient
6 system of roads and highways which would be in
7 addition to or in augmentation of or in conjunction with
8 already existing roads and highways, with particular,
9 but not exclusive, emphasis upon the feasibility,
10 desirability and prudence of utilizing the imposition of
11 tolls upon the users of such roads and highways, either
12 alone or together with other means and methods of
13 financing the construction and maintenance of the same;

14 (b) Special attention shall be given to planning,
15 financing and construction of a modern highway
16 connecting the Appalachian Corridor "G" highway at
17 Chapmanville with Interstate Highway 64 at Hunting-
18 ton; and the planning, financing, and construction of
19 Appalachian Corridor "H";

20 (c) To file an interim report as to its progress and
21 tentative conclusions with the governor, the president of
22 the Senate and the speaker of the House of Delegates

23 not later than the second Wednesday in January, in the
24 year one thousand nine hundred eighty-six;

25 (d) To file its final report with respect to its findings
26 and conclusions, together with any legislation it deems
27 appropriate to recommend and as it deems necessary to
28 carry its findings and conclusions into effect with the
29 governor, the president of the Senate and the speaker
30 of the House of Delegates not later than the second
31 Wednesday in January in the year one thousand nine
32 hundred eighty-eight;

33 (e) To employ such legal, technical, investigative,
34 clerical, stenographic, advisory and other personnel as
35 it deems necessary and needful and to fix the reasonable
36 compensation of such persons as may be so employed;

37 (f) To request such information and data from any
38 state officer or agency or from any political subdivision
39 of the state as the commission may deem necessary to
40 assist it in the performance of its duties and it shall be
41 the duty of all such officers and agencies to cooperate
42 with and assist the commission in and about the
43 completion of its studies and deliberations;

44 (g) To confer with representative citizens and groups
45 of the private, business and industrial sectors with
46 respect to all matters deemed relevant to the study
47 program of the commission; and

48 (h) To perform every other act necessary or desirable
49 to carry out any of the other powers, duties or respon-
50 sibilities enumerated in this article.

**§17-2B-6. Interpretation of article; termination of
commission.**

1 (a) The provisions of this article shall be liberally
2 construed in order to permit the commission sufficient
3 latitude for the orderly completion of its studies and
4 duties.

5 (b) The commission shall cease its existence on the
6 first day of July, one thousand nine hundred eighty-
7 eight.

CHAPTER 116

(S. B. 139—By Senators Whitacre, Parker and Warner)

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

AN ACT to amend article four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four-a, relating to requiring on the state road system the construction of guardrails using wooden posts; exception.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-24a. Guardrail construction.

1 Beginning the first day of July, one thousand nine
2 hundred eighty-eight, any guardrail placed or replaced
3 in new or existing locations on the state road system
4 must be constructed using wooden posts unless use of
5 another material would reduce the costs of such
6 construction or reconstruction: *Provided*, That when
7 guardrails are damaged, materials of a like kind may
8 be used.

CHAPTER 117

(Com. Sub. for H. B. 2442—By Delegates Hale and Overington)

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

AN ACT to amend and reenact section four, article fifteen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the county and regional convict work force; work by county and regional jail inmates upon county grounds,

institutions, roads and bridges to control litter; allowing good time credited to inmates for said work.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. COUNTY CONVICT ROAD FORCE.

§17-15-4. Work by prisoners; relief of sheriffs and others from liability for injuries, etc.

1 (a) Any person convicted of a criminal offense and
2 sentenced to confinement in a county or regional jail
3 shall, as incident to such sentence of confinement, be
4 required to perform labor within the jail, as a trustee
5 or otherwise, or in and upon the buildings, grounds,
6 institutions, roads, bridges, streams or other public
7 works of the county or the area within which the
8 regional jail is located if he or she meets the following
9 criteria:

10 (1) Such person is at least eighteen years of age;

11 (2) Such person is physically and mentally sound and
12 has not been exempted for medical reasons from such
13 work by a licensed physician or other medical profes-
14 sional; and

15 (3) Such person is deemed by the county commission,
16 the sheriff or the regional jail commission not to pose
17 a threat to the community if released for work purposes.

18 (b) The work described in the subsection (a) of this
19 section shall be performed under the supervision, care
20 and custody of the county commission, the regional jail
21 commission, the sheriff, his deputies, correctional
22 officers or other person charged with inmate supervision
23 to perform maintenance or control litter in this state.

24 (c) In order to effectuate the provisions of this section
25 the county commission, the sheriff or the regional jail
26 commission shall promulgate rules and regulations for
27 the safe and useful employment of inmate labor.

28 (d) Notwithstanding any provision of this code to the
29 contrary, the county commission, its members and
30 agents, the regional jail commission, its members or

31 agents, the sheriff, his deputies, correctional officers and
32 agents shall be immune from liability of any kind for
33 accidents, injuries or death to such inmate except for
34 accident, injury or death resulting directly from gross
35 negligence or malfeasance.

36 (e) The sheriff of the county in which the work is to
37 be performed, with the approval of the county commis-
38 sion, or the regional jail commission may hire or appoint
39 any personnel necessary for the supervision of inmate
40 labor.

41 (f) Nothing in this section shall be construed to allow
42 the use of inmate labor for private projects or as
43 contract employees of for profit businesses.

44 (g) Any inmate who performs work pursuant to the
45 provisions of this section shall receive as sole and full
46 compensation therefor, a reduction in his or her term
47 of incarceration of not more than twenty-five percent of
48 the original sentence excluding any other statutorily
49 granted "good time". Each eight-hour period of ap-
50 proved work shall entitle an inmate to one day's sentence
51 reduction: *Provided*, That any "good time" earned
52 pursuant to the provisions of this section shall be in
53 addition to any other reduction of sentence the inmate
54 may accumulate.

55 (h) Any person being held as a detainee or for
56 contempt may voluntarily participate in such labor as
57 provided for in this section under the terms and
58 conditions hereinbefore set forth.

CHAPTER 118

(Com. Sub. for S. B. 38—Originating in the Senate Committee
on Natural Resources)

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

AN ACT to amend article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen-b, relating to department of commerce, division of parks and recreation; discounts on

campground rental fees for West Virginia residents over the age of sixty-two.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-17b. Discounts for West Virginia residents over the age of sixty-two.

1 The commissioner shall provide to West Virginia
2 citizens who are sixty-two years of age or older, and who
3 document residency and age by a valid West Virginia
4 driver's license, a fifty percent reduction in campground
5 rental fees for each campsite to be used exclusively by
6 said eligible camper: *Provided*, That the fifty percent
7 reduction in campground rental fees shall only apply to
8 those rentals occurring during the period of time
9 beginning on the day after Labor Day and ending four
10 days prior to Memorial Day.

CHAPTER 119

(H. B. 2072—By Delegate Givens)

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

AN ACT to repeal sections four, five and seven, article nine, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said chapter by adding thereto a new article, designated article nine-a, relating to tobacco usage restrictions; legislative intent; prohibiting the selling, giving or furnishing of any tobacco product to any person under the age of eighteen; prohibiting the use or possession of tobacco or tobacco products by person under the age of eighteen; prohibiting the use of tobacco or tobacco products in certain areas of certain public schools; requiring outdoor advertising and billboards for

smokeless tobacco products to carry certain public health warnings; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That sections four, five and seven, article nine, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter be amended by adding thereto a new article, designated article nine-a, to read as follows:

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-1. Legislative intent.

§16-9A-2. Sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, or chewing tobacco to persons under eighteen; penalty.

§16-9A-3. Use or possession of tobacco or tobacco products by persons under the age of eighteen years; penalty.

§16-9A-4. Use of tobacco or tobacco products in certain areas of certain public schools prohibited; penalty.

§16-9A-5. Outdoor billboard advertisements for smokeless tobacco products, nuisance affecting public health.

§16-9A-1. Legislative intent.

1 The Legislature hereby declares it to be the policy and
2 intent of this state to discourage and ban the use of
3 tobacco products by minors. As basis for this policy, the
4 Legislature hereby finds and accepts the medical
5 evidence that smoking tobacco may cause lung cancer,
6 heart disease, emphysema and other serious health
7 problems while the use of smokeless tobacco may cause
8 gum disease and oral cancer. It is the further intent of
9 the Legislature in banning the use of tobacco products
10 by minors to ease the personal tragedy and eradicate the
11 severe economic loss associated with the use of tobacco
12 and to provide the state with a citizenry free from the
13 use of tobacco.

§16-9A-2. Sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, or chewing tobacco to persons under eighteen; penalty.

1 No person, firm or corporation may sell, give or
2 furnish, or cause to be sold, given or furnished, to any
3 person under the age of eighteen years:

4 (a) Any cigarette, cigarette paper or any other paper

5 prepared, manufactured or made for the purpose of
6 smoking any tobacco or tobacco product; or,

7 (b) Any cigar, pipe, snuff, chewing tobacco or tobacco
8 product, in any form.

9 Any person, firm or corporation violating any of the
10 provisions of subdivisions (a) or (b) of this section is
11 guilty of a misdemeanor, and, upon conviction thereof,
12 shall be fined not less than ten nor more than twenty-
13 five dollars for the first offense, and for each subsequent
14 offense, not less than twenty-five nor more than three
15 hundred dollars.

§16-9A-3. Use or possession of tobacco or tobacco products by persons under the age of eighteen years; penalty.

1 No person under the age of eighteen years shall have
2 on or about his or her person or premises or use any
3 cigarette, cigarette paper or any other paper prepared,
4 manufactured or made for the purpose of smoking any
5 tobacco products, in any form; or, any pipe, snuff,
6 chewing tobacco or tobacco product. Any person
7 violating the provisions of this section is punishable by
8 a fine of five dollars and notwithstanding the provisions
9 of section one, article five, chapter forty-nine, the
10 magistrate court shall have concurrent jurisdiction.

§16-9A-4. Use of tobacco or tobacco products in certain areas of certain public schools prohibited; penalty.

1 Every person who shall smoke a cigarette or ci-
2 garettes, pipe, cigar or other implement, of any type or
3 nature, designed, used or employed for smoking any
4 tobacco or tobacco product; or who shall use any tobacco
5 product, whether chewing tobacco, snuff or otherwise,
6 in any building or part thereof used for instructional
7 purposes, in any school of this state, as defined in section
8 one, article one, chapter eighteen of this code, or on any
9 lot or grounds actually used for instructional purposes
10 of any such school of this state while such school is used
11 or occupied for school purposes, shall be guilty of a
12 misdemeanor, and, upon conviction thereof, shall be

13 punished for each offense by a fine of not less than one
14 nor more than five dollars: *Provided*, That this prohi-
15 bition shall not be construed to prevent the use of any
16 tobacco or tobacco product in any faculty lounge or staff
17 lounge or faculty office or other area of said public
18 school not used for instructional purposes: *Provided*,
19 *however*, That students do not have access thereto:
20 *Provided further*, That nothing herein contained shall be
21 construed to prevent any county board of education from
22 promulgating rules and regulations that further restrict
23 the use of tobacco or tobacco products, in any form, from
24 any other part or section of any public school building
25 under its jurisdiction.

§16-9A-5. Outdoor billboard advertisements for smokeless tobacco products, nuisance affecting public health.

1 (a) Any outdoor billboard advertisement for snuff and
2 chewing tobacco products must conspicuously display
3 one of the following statements:

4 **“WARNING: THIS PRODUCT MAY CAUSE**
5 **MOUTH CANCER”**

6 **“WARNING: THIS PRODUCT MAY CAUSE**
7 **GUM DISEASE AND TOOTH LOSS”**

8 **“WARNING: THIS PRODUCT IS NOT A SAFE**
9 **ALTERNATIVE TO CIGARETTES”**

10 The warnings shall be rotated every four months by
11 the manufacturer, packager or importer of snuff and
12 chewing tobacco products in an alternating sequence in
13 the advertisement for each brand of such tobacco
14 product. Such warning shall appear in the format and
15 type style prescribed under 15 U.S.C. 1333 (b) (3), as
16 amended.

17 No other warning, format, or type style in any outdoor
18 billboard advertisement shall be required by any state
19 or local statute or regulation.

20 (b) Any outdoor billboard advertisement that does not
21 conform to the provisions of this section shall be deemed
22 a nuisance affecting the public health.

CHAPTER 120

(H. B. 3201—By Delegate Farley)

[Passed May 7, 1987; 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-seven, to the State Department of Education, Account No. 2860, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

WHEREAS, The Governor has established the receipt and availability of federal funds for new programs, now available for expenditure in the current fiscal year of 1986-87, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 2860, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented by adding to such account the following sums to the designated line items:

1	TITLE 2. APPROPRIATIONS.		
2	Section 2. Appropriations of federal funds.		
3	EDUCATIONAL		
4	29— <i>State Department of Education</i>		
5	(WV Code Chapters 18 and 18A)		
6	Acct. No. 2860		
7			Federal
8			Funds
9			Fiscal Year
10			1986-87
11	1	Personal Services	\$ 42,354
12	3	Current Expenses	37,989

13	5	Equipment.....		1,440
14	11	Unclassified.....		856,043
15		Discretionary Funds	\$ 12,000	
16		Aid to Counties	844,043	
17	12	Total		<u>\$937,826</u>

18 The purpose of this supplementary appropriation bill
 19 is to supplement this account in the budget bill for
 20 current fiscal year 1986-87 to appropriate and permit
 21 use and expenditure of federal funds received in respect
 22 of a new program under the Drug-Free Schools and
 23 Communities Act of 1986, with such amounts to be
 24 available for expenditure upon the effective date of the
 25 bill. Any unexpended balance remaining at the end of
 26 fiscal year 1986-87 is hereby reappropriated for ex-
 27 penditure in next fiscal year 1987-88.

CHAPTER 121

(H. B. 3199—By Delegate Farley)

[Passed May 7, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts as specified herein of the balances contained at the close of the thirtieth day of June, one thousand nine hundred eighty-seven in the designated special revenue accounts of the Public Service Commission, Account No. 8280; of the Public Service Commission-Gas Pipeline Division, Account No. 8285; and of the Public Service Commission-Motor Carrier Division, Account No. 8290, and as appropriated by chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

1 That the specified amounts of the balances, unex-
 2 pended and unencumbered, contained in the special
 3 revenue accounts, as designated, and in the amounts as

4 hereinafter specified, available for expenditure in fiscal
5 year one thousand nine hundred eighty-eight, and as
6 appropriated by chapter twenty-nine, acts of the
7 Legislature, regular session, one thousand nine hundred
8 eighty-six, known as the budget bill, be supplemented,
9 amended, reduced and caused to expire from such
10 designated accounts and back into the state fund,
11 general revenue of the state, at the close of the thirtieth
12 day of June, one thousand nine hundred eighty-seven,
13 and with such amounts to be thereafter available for
14 other and further appropriation or use after such date
15 and expiration: from Account No. 8280, \$1,438,000 shall
16 be expired; from Account No. 8285, \$386,000 shall be
17 expired; and from Account No. 8290, \$425,000 shall be
18 expired.

19 The purpose of this supplementary appropriation bill
20 is to supplement, amend, reduce and cause to expire into
21 the state fund, general revenue of the state, certain
22 specified amounts of the balances of the designated
23 special revenue accounts of the Public Service Commis-
24 sion, unexpended and unencumbered at the close of the
25 thirtieth day of June, one thousand nine hundred eighty-
26 seven, and with such amounts, totaling \$2,249,000 in the
27 aggregate to be thereafter available for other and
28 further appropriation or budgetary use in the following
29 fiscal year of 1987-88.

CHAPTER 122

(Com. Sub. for H. B. 2100—By Mr. Speaker, Mr. Chambers)

[Passed March 19, 1987; in effect from passage. Vetoed by the Governor.
Amended, committed to conference, passed May 14, 1987; in effect from passage.
Again vetoed by the Governor. Passed over veto.]

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

Be it enacted by the Legislature of West Virginia:

Title

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

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 bill
2 is to appropriate money necessary for the economical
3 and efficient discharge of the duties and responsibilities
4 of the state and its agencies during the fiscal year one
5 thousand nine hundred eighty-eight.

1 **Sec. 2. Definitions.**—For the purpose of this bill:

2 “Governor” shall mean the governor of the state of
3 West Virginia.

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

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

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

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

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

3 “Personal services” shall mean salaries, wages and
4 other compensation paid to full-time, part-time and
5 temporary employees of the spending unit but shall not
6 include fees or contractual payments paid to consultants

7 or to independent contractors engaged by the spending
8 unit.

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

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

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

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

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

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

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

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

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

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

42 Appropriations classified in any of the above catego-

43 ries shall be expended only for the purposes as defined
44 above and only for the spending units herein designated.

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

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

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

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§14. Sinking fund deficiencies.

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

§16. Appropriations for local governments.

§17. Total appropriations.

§18. General school fund.

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

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

8 Any unexpended balances remaining in federal funds
 9 at the close of the fiscal year 1986-87 are hereby
 10 reappropriated for expenditure during the fiscal year
 11 1987-88.

LEGISLATIVE

1—Senate

Acct. No. 1010

	Federal Funds Fiscal Year 1987-88	General Revenue Fund Fiscal Year 1987-88
1 Compensation of Members ..\$	—	\$ 275,000*
2 Compensation and Per		
3 Diem of Officers and		
4 Employees	—	1,042,125
5 Expenses of Members	—	215,000
6 Repairs and Alterations	—	50,000
7 Current Expenses and		
8 Contingent Fund	—	522,500
9 Computer Supplies	—	25,000
10 Computer Systems	—	100,000

11	Printing Blue Book	—	194,250
12	Total	\$ —	\$ 2,423,875

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

13 The appropriations for the senate for the fiscal year
 14 1986-87 are to remain in full force and effect, and are
 15 hereby reappropriated to June 30, 1988. Any balances
 16 so reappropriated may be transferred and credited to
 17 the 1987-88 accounts.

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

22 The clerk of the senate, with approval of the president,
 23 is authorized to draw his requisitions upon the auditor,
 24 payable out of the Current Expenses and Contingent
 25 Fund of the senate, for any bills for supplies and
 26 services that may have been incurred by the senate and
 27 not included in the appropriation bill, for supplies and
 28 services incurred in preparation for the opening, the
 29 conduct of the business and after adjournment of any
 30 regular or extraordinary session, and for the necessary
 31 operation of the senate offices, the requisitions for same
 32 to be accompanied by bills to be filed with the auditor.

33 The clerk of the senate, with written approval of the
 34 president, or the president of the senate shall have
 35 authority to employ such staff personnel during any
 36 session of the legislature as shall be needed in addition
 37 to staff personnel authorized by the senate resolution
 38 adopted during any such session. The clerk of the senate,
 39 with written approval of the president, or the president
 40 of the senate shall have authority to employ such staff
 41 personnel between sessions of the legislature as shall be
 42 needed, the compensation of all staff personnel during
 43 and between sessions of the legislature, notwithstanding
 44 any such senate resolution, to be fixed by the president
 45 of the senate. The clerk is hereby authorized to draw his
 46 requisitions upon the auditor for the payment of all such
 47 staff personnel for such services, payable out of the
 48 appropriation for Compensation and Per Diem of

49 Officers and Employees or Current Expenses and
50 Contingent Fund of the senate.

51 For duties imposed by law and the senate, the clerk
52 of the senate shall be paid a monthly salary as provided
53 in senate resolution adopted January 1987 and payable
54 out of the amount appropriated for Compensation and
55 Per Diem of Officers and Employees.

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

2—House of Delegates

Acct. No. 1020

1	Compensation of Members ..\$	—	\$ 660,000*
2	Compensation and		
3	Per Diem of Officers		
4	and Employees	—	346,000
5	Expenses of Members	—	420,000
6	Current Expenses and		
7	Contingent Fund	—	592,750
8	Total	—	\$ 2,018,750

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

9 The appropriations for the house of delegates for the
10 fiscal year 1986-87 are to remain in full force and effect
11 and are hereby reappropriated to June 30, 1988. Any
12 balances so reappropriated may be transferred and
13 credited to the 1987-88 accounts.

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

18 The clerk of the house of delegates, with approval of
19 the speaker, is authorized to draw requisition upon the
20 auditor, payable out of the Current Expenses and

21 Contingent Fund of the house of delegates, for any bills
 22 for supplies and services that may have been incurred
 23 by the house of delegates and not included in the
 24 appropriation bill, for bills for services and supplies
 25 incurred in preparation for the opening of the session
 26 and after adjournment, and for the necessary operation
 27 of the house of delegates offices, the requisitions for the
 28 same to be accompanied by bills to be filed with the
 29 auditor.

30 The speaker of the house of delegates, upon approval
 31 of the house committee on rules, shall have authority to
 32 employ such staff personnel during and between
 33 sessions of the legislature as shall be needed, in addition
 34 to personnel designated in the house resolution, and the
 35 compensation of all personnel shall be as fixed in such
 36 house resolution for the session, or fixed by the speaker,
 37 with the approval of the house committee on rules,
 38 during and between sessions of the legislature, notwith-
 39 standing such house resolution. The clerk of the house
 40 is hereby authorized to draw requisitions upon the
 41 auditor for such services, payable out of the appropri-
 42 ation for the Compensation and Per Diem of Officers
 43 and Employees Fund or Current Expenses and Conting-
 44 ent Fund of the house of delegates.

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

3—Joint Expenses

Acct. No. 1030

(WV Code Chapter 4)

1	Unclassified	\$	—	\$	4,307,936
---	--------------------	----	---	----	-----------

2	Joint Committee on		
3	Government and Finance	—	—0—
4	To Pay Cost of		
5	Legislative Printing	—	—0—
6	Rule-Making		
7	Review Committee	—	—0—
8	National Conference		
9	of State Legislatures	—	—0—
10	Education Commission		
11	of the States	—	—0—
12	Association of State		
13	Auditors, Comptrollers		
14	and Treasurers	—	—0—
15	Council of State Govern-		
16	ments' Governmental		
17	Accounting Standards		
18	Board	—	—0—
19	Total	\$ —	\$ 4,307,936

20 The appropriation for Joint Expenses for the fiscal
 21 year 1986-87 is to remain in full force and effect and
 22 is hereby reappropriated to June 30, 1988. Any balances
 23 so reappropriated may be transferred and credited to
 24 the 1987-88 accounts.

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

JUDICIAL

4—Supreme Court—General Judicial

Acct. No. 1110

1	Personal Services	\$ —	\$ 16,904,320*
2	Annual Increment	—	159,296
3	Other Expenses	15,000	2,850,000
4	Judges' Retirement		
5	System	—	1,163,810
6	Other Court Costs	—	2,650,024

7	Judicial Training		
8	Program	—	250,000
9	Mental Hygiene Fund.....	—	400,000
10	Total.....	\$ 15,000	\$ 24,377,450

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

11 Any unexpended balances remaining in this appropri-
 12 ation at the close of the fiscal year 1986-87 are hereby
 13 reappropriated for expenditure during the fiscal year
 14 1987-88. Any balances so reappropriated may be
 15 transferred and credited to the 1987-88 accounts.

16 This appropriation shall be administered by the
 17 administrative director of the state supreme court of
 18 appeals, who shall draw his requisitions for warrants in
 19 payment in the form of payrolls, making deductions
 20 therefrom as required by law, for taxes and other items.

21 The appropriation for Judges' Retirement System is
 22 to be transferred to the judges' retirement fund, in
 23 accordance with the law relating thereto, upon requis-
 24 ition of the administrative director of the state supreme
 25 court of appeals.

EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

Acct. No. 1200

1	Salary of Governor.....	\$ —	\$ 72,000
2	Other Personal Services.....	—	980,629
3	Annual Increment	—	2,529
4	Current Expenses	—	138,876
5	Equipment	—	1,464
6	Total.....	\$ —	\$ 1,195,498

6—Office of Community and Industrial Development

(WV Code Chapter 5B)

Acct. No. 1210

1	Unclassified	\$ 12,324,786	\$ 4,926,721
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2	Personal Services	-0-	-0-
3	Annual Increment	-0-	-0-
4	Current Expenses	-0-	-0-
5	Equipment	-0-	-0-
6	The Economic Development		
7	Loan Fund	—	-0-
8	Regional Councils.	—	-0-
9	WV Jobs Develop-		
10	ment Corporation	—	-0-
11	A.R.C. Assessment	—	-0-
12	WV Public Energy		
13	Authority	—	-0-
14	Partnership Grants	—	-0-
15	Fire Departments	—	-0-
16	Civil Air Patrol	—	-0-
17	Aeronautics Commission—		
18	Airport Matching	—	-0-
19	Emergency Assistance	—	-0-
20	National Youth		
21	Science Camp	—	-0-
22	To Local Entities	-0-	—
23	Transfer to State		
24	Spending Units	-0-	—
25	International Trade		
26	Offices	—	-0-
27	WV Export Authority	—	-0-
28	Institute for Trade		
29	Development—		
30	Marshall University	—	-0-
31	Center for Economic		
32	Analysis and		
33	Statistics—WVU	—	-0-
34	Labor Management		
35	Advisory Council	—	-0-
36	WV Industry Assistance		
37	Corporation	—	-0-
38	Total	\$ 12,324,786	\$ 4,926,721

39 Any unexpended balances remaining in the appropri-
40 ations for Community Water Development and Partner-
41 ship Grants (account no. 1210-11), Partnership Grants
42 (account no. 1210-15), Fire Departments (account no.
43 1210-16), Coal Development (account no. 1210-17),

44 Emergency Assistance (account no. 1210-18), Flood
 45 (account no. 1210-19), Aeronautics Commission—Airport
 46 Matching (account no. 1210-23) and International Trade
 47 Offices (account no. 1210-28) at the close of the fiscal
 48 year 1986-87 are hereby reappropriated for expenditure
 49 during the fiscal year 1987-88.

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

(WV Code Chapter 5)

Acct. No. 1220

1 Any unexpended balances remaining in the appropri-
 2 ations for Emergency Jobs Program—Public Service
 3 Jobs (account no. 1220-04) and Emergency Jobs Pro-
 4 gram—Public Service Jobs (account no. 1220-05) at the
 5 close of the fiscal year 1986-87 are hereby reappropri-
 6 ated for expenditure during the fiscal year 1987-88.

8—Governor’s Office—Custodial Fund

(WV Code Chapter 5)

Acct. No. 1230

1 Unclassified—Total \$ — \$ 273,949

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

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

(WV Code Chapter 5)

Acct. No. 1240

1 Unclassified—Total \$ — \$ 775,000

2 Any unexpended balance remaining in the appropri-
 3 ation (account no. 1240-06) at the close of the fiscal year
 4 1986-87 is hereby reappropriated for expenditure
 5 during the fiscal year 1987-88.

6 From this appropriation there may be expended, at
 7 the discretion of the governor, an amount not to exceed

8 \$1,000 as West Virginia's contribution to the interstate
9 oil compact commission.

*10—Governor's Office-Flood Relief-
Federally Declared Disaster*

Acct. No. 1260

1 Any unexpended balance remaining in the appropri-
2 ation (account no. 1260-06) at the close of the fiscal year
3 1986-87 is hereby reappropriated for expenditure
4 during the fiscal year 1987-88. The purpose of this
5 appropriation is for use upon notification of a federally
6 declared disaster.

11—Office of Emergency Services

(WV Code Chapter 15)

Acct. No. 1300

1	Unclassified	\$3,061,469	\$	251,500*
2	Personal Services	—0—		—0—
3	Annual Increment	—0—		—0—
4	Current Expenses	—0—		—0—
5	Repairs and Alterations	—0—		—0—
6	Equipment	—0—		—
7	To Local Entities	—0—		—
8	Transfer to State			
9	Spending Units	—0—		—
10	Total	\$ 3,061,469	\$	251,500

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

FISCAL

12—Auditor's Office—General Administration

(WV Code Chapter 12)

Acct. No. 1500

1	Salary of State Auditor	\$	46,800
2	Unclassified		1,911,368
3	Other Personal Services		—0—
4	Annual Increment		—0—
5	Current Expenses		—0—

6	Equipment	—	—0—
7	Microfilm	—	—0—
8	Total	\$ —	\$ 1,958,168

13—Auditor’s Office—Social Security

(WV Code Chapter 12)

Acct. No. 1510

1	To Match Contributions		
2	of State Employees for		
3	Social Security—Total	\$ —	\$ 10,988,846

4 Any unexpended balance remaining in the appropri-
 5 ation for Auditor’s Office—Social Security (account no.
 6 1510-06) at the close of the fiscal year 1986-87 is hereby
 7 reappropriated for expenditure during the fiscal year
 8 1987-88.

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

*14—Auditor’s Office—
 Unemployment Compensation*

(WV Code Chapter 12)

Acct. No. 1520

1	Unclassified—Total	\$ —	\$ 402,000
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2 The above appropriation is intended to cover the
 3 state’s share of unemployment compensation costs for
 4 those spending units operating from the general revenue
 5 fund. The department of highways, department of motor
 6 vehicles, workers’ compensation commissioner and other
 7 departments operating from special revenue funds
 8 and/or federal funds shall pay their proportionate share
 9 of the unemployment compensation cost for their
 10 respective divisions.

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

15—Treasurer's Office

(WV Code Chapter 12)

Acct. No. 1600

1	Salary of Treasurer	\$	—	\$	50,400
2	Unclassified		—		901,071
3	Other Personal Services		—		—0—
4	Annual Increment		—		—0—
5	Current Expenses		—		—0—
6	Equipment		—		—0—
7	Microfilm Program		—		—0—
8	Total	\$	—	\$	951,471

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

(WV Code Chapter 12)

Acct. No. 1650

1	Total	\$	—	\$	14,251,500
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2 Any unexpended balance remaining in the appropri-
 3 ation for Treasurer's Office—School Building Sinking
 4 Fund (account no. 1650-06) at the close of the fiscal year
 5 1986-87 is hereby reappropriated for expenditure
 6 during the fiscal year 1987-88.

17—Municipal Bond Commission

(WV Code Chapter 13)

Acct. No. 1700

1	Unclassified	\$	—	\$	102,212
2	Personal Services		—		—0—

3	Annual Increment	—	—0—
4	Current Expenses	—	—0—
5	Equipment	—	—0—
6	Total	\$ —	\$ 102,212

18—State Tax Department

(WV Code Chapter 11)

Acct. No. 1800

1	Unclassified	\$ —	\$ 13,915,740*
2	Personal Services	—	—0—
3	Annual Increment	—	—0—
4	Current Expenses	—	—0—
5	Repairs and Alterations	—	—0—
6	Equipment	—	—0—
7	Circuit Breaker		
8	Reimbursement	—	—0—
9	Property Reappraisal		
10	Program	—	—0—
11	Total	\$ —	\$ 13,915,740

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

12 Any unexpended balances remaining in the appropri-
 13 ations for Other Expenses (account no. 1800-07) and
 14 Property Reappraisal Program (account no. 1800-09) at
 15 the close of the fiscal year 1986-87 are hereby reappropri-
 16 ated for expenditure during the fiscal year 1987-88.

*19—Department of Finance
and Administration*

(WV Code Chapter 5A)

Acct. No. 2100

1	Unclassified	\$ —	\$ 4,253,925*
2	Personal Services	141,750	—0—
3	Annual Increment	1,440	—0—
4	Current Expenses	1,231,593	—0—
5	Repairs and Alterations	1,000	—0—
6	Equipment	604,000	—0—
7	Postage	—	—0—

8	Utilities	—	—0—
9	Public Transportation	—	—0—
10	Fire Service Fee	—	—0—
11	Building Equipment		
12	and Supplies	—	—0—
13	Southern Regional		
14	Education Board	—	—0—
15	Council of State		
16	Governments	—	—0—
17	National Governors'		
18	Association	—	—0—
19	Southern States		
20	Energy Board	—	—0—
21	Total	\$ 1,979,783	\$ 4,253,925

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

22 Any unexpended balance remaining in the Postage
23 account (account no. 2100-06) at the close of the fiscal
24 year 1986-87 is hereby reappropriated for expenditure
25 during the fiscal year 1987-88.

26 Any unexpended balance remaining in the appropri-
27 ation Retrofit Governor's Elevator (account no. 2100-28)
28 at the close of the fiscal year 1986-87 is hereby
29 reappropriated for expenditure during the fiscal year
30 1987-88 and redesignated to Retrofit Elevator in (1)
31 Attorney General's Section and (2) Retrofit Elevator in
32 the Capitol Building.

33 The department of highways shall reimburse the
34 revolving fund monthly for all actual expenses incurred
35 pursuant to the provisions of section thirteen, article
36 two-a, chapter seventeen of the code.

20—State Board of Insurance

(WV Code Chapter 29)

Acct. No. 2250

1	Unclassified	\$ —	\$ 2,909,339
2	Personal Services	—	—0—
3	Annual Increment	—	—0—
4	Current Expenses	—	—0—

5	Equipment	—	—0—
6	Premiums, Claims		
7	and Other		
8	Expenses	—	—0—
9	Total	\$ —	\$ 2,909,339

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

21 These funds may be transferred to a special account
 22 for the payment of premiums, self-insurance losses, loss
 23 adjustment expenses and loss prevention engineering
 24 fees and may be transferred to a special account for
 25 disbursement for payment of premiums and insurance
 26 losses.

LEGAL

21—Attorney General

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

Acct. No. 2400

1	Salary of Attorney		
2	General	\$ —	\$ 50,400
3	Unclassified	—	2,510,442
4	Other Personal		
5	Services	—	—0—
6	Annual Increment	—	—0—
7	Current Expenses	—	—0—
8	Equipment	—	—0—
9	Publication of Reports		
10	and Opinions	—	—0—
11	To Protect the		
12	Resources or Tax		

13	Structure of the		
14	State in Controversies		
15	or Legal Proceedings		
16	Affecting Same.....	—	—0—
17	Total.....	\$ —	\$ 2,560,842

18 Any unexpended balance remaining in the appropri-
 19 ation for Publication of Reports and Opinions (account
 20 no. 2400-05) at the close of the fiscal year 1986-87 is
 21 hereby reappropriated for expenditure during the fiscal
 22 year 1987-88.

23 When legal counsel or secretarial help is appointed by
 24 the attorney general for any state spending unit, this
 25 account shall be reimbursed from such unit's appropri-
 26 ated account in an amount agreed upon by the
 27 attorney general and the proper authority of said
 28 spending unit.

22—Commission on Uniform State Laws

(WV Code Chapter 29)

Acct. No. 2450

1	Unclassified—Total.....	\$ —	\$ 11,000
2	To pay expenses of members of the commission on		
3	uniform state laws.		

INCORPORATING AND RECORDING

23—Secretary of State

(WV Code Chapters 3, 5 and 59)

Acct. No. 2500

1	Salary of Secretary		
2	of State	\$ —	\$ 43,200
3	Unclassified	—	676,602
4	Other Personal Services.....	—	—0—
5	Annual Increment	—	—0—
6	Current Expenses	—	—0—
7	Equipment.....	—	—0—
8	Total.....	\$ —	\$ 719,802

24—State Elections Commission

(WV Code Chapter 3)

Acct. No. 2510

1	Unclassified—Total	\$	—	\$	12,000
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EDUCATIONAL

25—West Virginia Board of Regents (Control)

(WV Code Chapter 18)

Acct. No. 2790

1	Unclassified	\$	—	\$157,142,886
2	Personal Services		—	—0—
3	Annual Increment		—	—0—
4	Current Expenses		—	—0—
5	Repairs and			
6	Alterations		—	—0—
7	Equipment		—	—0—
8	Bureau of			
9	Coal Research...		—	—0—
10	National Research			
11	Center for			
12	Coal and Energy		—	—0—
13	Doctoral Research			
14	—WVU.....		—	—0—
15	Agriculture and			
16	Forestry			
17	Experiment			
18	Station—WVU..		—	—0—
	Personal			
	Services		—	—0—
	Current			
	Expenses ...		—	—0—
19	Jackson's Mill			
20	State 4-H Camp		—	—0—
21	Center for			
22	Economic			
23	Development....		—	—0—
24	Total	\$	—	\$157,142,886

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

26—West Virginia Board of Regents

(WV Code Chapter 18)

Acct. No. 2800

1	Unclassified	\$	—	\$	5,326,593
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—		—0—
5	Equipment		—		—0—
6	Higher Education				
7	Grant Program		—		—0—
8	Tuition Contract				
9	Programs		—		—0—
10	Total	\$	—	\$	5,326,593

*27—West Virginia School of
 Osteopathic Medicine*

(WV Code Chapter 18)

Acct. No. 2810

1	Unclassified	\$	—	\$	4,347,894
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—		—0—
5	Repairs and Alterations		—		—0—
6	Equipment		—		—0—
7	Primary Health				
8	Training		—		—0—
9	Total	\$	—	\$	4,347,894

28—Marshall University—Medical School

(WV Code Chapter 18)

Acct. No. 2840

1	Unclassified	\$	—	\$	6,404,461
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2	Personal Services	—	—0—
3	Annual Increment	—	—0—
4	Current Expenses	—	—0—
5	Repairs and Alterations	—	—0—
6	Equipment	—	—0—
7	Total	\$ —	\$ 6,404,461

29—*West Virginia University—
Schools of Health Sciences*

(WV Code Chapter 18)

Acct. No. 2850

1	Unclassified	\$ —	\$ 27,643,290
2	Personal Services	—	—0—
3	Annual Increment	—	—0—
4	Current Expenses	—	—0—
5	Repairs and Alterations	—	—0—
6	Equipment	—	—0—
7	Family Practice Residency		
8	Program	—	—0—
9	Community Hospital		
10	Residency Support	—	—0—
11	Total	\$ —	\$ 27,643,290

12 Any unexpended balance remaining in the appropri-
13 ation for Cancer Research Center (account no. 2850-23)
14 at the close of the fiscal year 1986-87 is hereby
15 reappropriated for expenditure during fiscal year 1987-
16 88.

17 May be transferred to West Virginia university—
18 medical school fund upon requisition of the governor.

30—*State Department of Education*

(WV Code Chapters 18 and 18A)

Acct. No. 2860

1	Unclassified	\$ 6,600	\$ 5,334,508
2	Personal Services	—	—0—

3	Annual Increment	—	—0—
4	Current Expenses	—0—	—0—
5	Repairs and		
6	Alterations	—	—0—
7	Equipment	—	—0—
8	Statewide Testing		
9	Program	—	—0—
	Personal		
	Services	—	—0—
	Annual		
	Increment ..	—	—0—
	Other		
	Expenses ...	—	—0—
	Equipment ...	—	—0—
10	Professional		
11	Competency		
12	Testing	—	—0—
	Personal		
	Services	—	—0—
	Annual		
	Increment ..	—	—0—
	Other		
	Expenses ...	—	—0—
13	Aid to		
14	Children's		
15	Home	—	—0—
16	Child Development		
17	Program	—	—0—
18	Tuition Waiver....	—	—0—
19	Microcomputer		
20	Network		
21	Program	—	—0—
22	Total	\$ 6,600	\$ 5,334,508

23 Any unexpended balance remaining in the appropri-
 24 ation for Tuition Waiver (account no. 2860-21) at the
 25 close of the fiscal year 1986-87 is hereby reappropriated
 26 for expenditure during the fiscal year 1987-88.

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

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

(WV Code Chapters 18 and 18A)

Acct. No. 2870

1	Unclassified	\$ 46,269,791	\$ 2,048,804
2	Personal Services	—0—	—0—
3	Annual Increment	—0—	—0—
4	Current Expenses	—0—	—0—
5	Repairs and Alterations	—0—	—
6	Equipment	—0—	—
7	Aid to Counties—Includes		
8	Hot Lunches and Canning		
9	for Hot Lunches	—	—0—
10	To Local Entities	—0—	—
11	Total	\$ 46,269,791	\$ 2,048,804

*32—State Board of Education—
Vocational Division*

(WV Code Chapters 18 and 18A)

Acct. No. 2890

1	Unclassified	\$ 9,284,331	\$ 14,857,779
2	Personal Services	—0—	—0—
3	Annual Increment	—0—	—0—
4	Current Expenses	—0—	—0—
5	Repairs and Alterations	—0—	—
6	Equipment	—0—	—0—
7	Vocational Aid	—	—0—
8	Adult Basic Education	—	—0—
9	Start-up Funds and		
10	Equipment for		
11	New and Existing		
12	Facilities	—	—0—
13	New and Expanding		
14	Industries	—	—0—
15	To Local Entities	—0—	—
16	Capital Outlay		
17	(Construction)	—	—0—
18	Total	\$ 9,284,331	\$ 14,857,779
19	Any unexpended balances remaining in the appropri-		

20 ations for New and Expanding Industries (account no.
21 2890-18) and Capital Outlay (account no. 2890-20) at the
22 close of the fiscal year 1986-87 are hereby reappropri-
23 ated for expenditure during the fiscal year 1987-88.

33—Educational Broadcasting Authority

(WV Code Chapter 10)

Acct. No. 2910

1	Unclassified	\$ 1,351,250	\$ 4,694,772
2	Personal Services	—	—0—
3	Annual Increment	—	—0—
4	Current Expenses	—0—	—0—
5	Repairs and Alterations	—0—	—
6	Equipment	—0—	—0—
7	Regional ETV and Radio	—	—0—
8	Annual Increment	—	—0—
9	Capital Outlay—Equipment	—	—0—
10	Total	\$ 1,351,250	\$ 4,694,772

11 The Unclassified appropriation includes funding for
12 the construction and operation of regional ETV and
13 radio stations. These funds may be transferred to special
14 revenue accounts for matching college, university, city,
15 county, federal and/or other generated revenues.

34—State Department of Education

Acct. No. 2920

1	Governor's Lighthouse		
2	School Program—		
3	Unclassified—Total	\$ —	\$ —0—

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

(WV Code Chapters 18 and 18A)

Acct. No. 2930

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

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

(WV Code Chapters 18 and 18A)

Acct. No. 2950

1	Professional Educators.....\$	—	\$484,483,670
2	Service Personnel.....	—	176,024,708
3	Fixed Charges.....	—	64,866,256
4	Transportation.....	—	26,417,605
5	Administration.....	—	4,554,589
6	Other Current Expenses....	—	42,933,045
7	Improve Instructional		
8	Programs.....	—	<u>28,144,279</u>
9	Basic Foundation		
10	Allowances.....	—	827,424,152
11	Less Local Share.....	—	<u>(109,074,939)</u>
12	Total Basic		
13	State Aid.....	—	718,349,213
14	Professional Educators.....	—	—0—
15	Service Personnel.....	—	—0—
16	Increased Enrollment.....	—	<u>400,000</u>
17	Total.....\$	—	\$718,749,213

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

(WV Code Chapters 18 and 18A)

Acct. No. 2960

1	Unclassified.....	\$21,875,231	\$9,412,379
2	Personal		
3	Services.....	—0—	—0—
4	Annual		
5	Increment.....	—0—	—0—
6	Current Expenses	—0—	—0—
7	Repairs and		
8	Alterations.....	—0—	—
9	Equipment.....	—0—	—0—
10	Out-of-State		
11	Instruction.....	—	—0—

12	Aid to			
13	Counties	—0—		—0—
	County			
	Grant			
	Awards.....	—	—0—	
	Special			
	State			
	Projects	—	—0—	
	Medley			
	Educational			
	Program ...	—0—		—0—
	Summer			
	Camp for			
	Gifted			
	Children....	—	—0—	
14	To Local Entities..	—0—		—
15	Preschool			
16	Handicapped			
17	Fund	—		—0—
18	Total	\$21,875,231		\$9,412,379

19 The Unclassified appropriation includes funding for
 20 Out-of-State Instruction and may be expended to
 21 provide instruction, care and maintenance for educable
 22 persons who are severely handicapped and for whom the
 23 state provides no facilities.

24 The Unclassified appropriation for Aid to Counties
 25 may be expended by county boards of education for the
 26 initiation and/or improvement of special education
 27 programs including employment of new special profes-
 28 sional education personnel solely serving exceptional
 29 children, training of educational personnel to work with
 30 exceptional children; and supportive costs such as
 31 materials, transportation, contracted services, minor
 32 renovations and other costs directly related to the
 33 special education delivery process prescribed by the
 34 state board of education and may also be used for
 35 nonpersonnel costs associated with the maintenance of
 36 special education programs.

37 The Unclassified appropriation includes funding for
 38 Special State Projects and may be expended to support

39 (1) an instructional materials center for visually
 40 handicapped children at the West Virginia schools for
 41 the deaf and the blind, (2) the state special olympics
 42 program, (3) the West Virginia advisory council for the
 43 education of exceptional children at the West Virginia
 44 college of graduate studies and (4) the statewide
 45 training activities or other programs benefiting excep-
 46 tional children.

38—Teachers' Retirement Board

(WV Code Chapter 18)

Acct. No. 2980

1	Teachers' Retirement Fund	\$	—	\$	17,240,910
2	Supplemental Benefits for				
3	Annuitants		—		6,000,000
4	Total	\$	—	\$	23,240,910

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

(WV Code Chapters 18 and 18A)

Acct. No. 3330

1	Unclassified	\$	—	\$	5,371,235
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—		—0—
5	Repairs and Alterations		—		—0—
6	Equipment		—		—0—
7	Program Improvements—				
8	Unclassified		—		—0—
9	Total	\$	—	\$	5,371,235

40—State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Acct. No. 3360

1	Unclassified	\$	—	\$	220,339
2	Personal Services		—		—0—

3	Annual Increment	—	—0—
4	Current Expenses	—	—0—
5	Repairs and Alterations	—	—0—
6	Total	\$ —	\$ 220,339

41—West Virginia Library Commission

(WV Code Chapter 10)

Acct. No. 3500

1	Unclassified	\$1,091,416	\$ 7,562,538
2	Personal Services	—0—	—0—
3	Annual Increment	—0—	—0—
4	Current Expenses	—0—	—0—
5	Repairs and Alterations	—0—	—0—
6	Equipment	—0—	—0—
7	Per-Capita Grants	—	—0—
8	Library Matching		
9	Fund (Construction)	—0—	—0—
10	Books, Periodicals		
11	and Films	—	—0—
12	To Local Entities	—0—	—
13	Total	\$ 1,091,416	\$ 7,562,538

14 Any unexpended balance remaining in the appropri-
 15 ation for Library Matching Fund (Construction) (ac-
 16 count no. 3500-10) at the close of the fiscal year 1986-
 17 87 is hereby reappropriated for expenditure during the
 18 fiscal year 1987-88.

42—Department of Culture and History

(WV Code Chapter 29)

Acct. No. 3510

1	Unclassified	\$ 806,140	\$ 3,992,865*
2	Personal Services	—0—	—0—
3	Annual Increment	—0—	—0—
4	Current Expenses	—0—	—0—
5	Repairs and		
6	Alterations	—	—0—
7	Equipment	—0—	—0—

8	Arts and			
9	Humanities			
10	Fund—			
11	Grants and			
12	Contractual			
13	Services	—0—		—0—
14	Department			
15	Programming			
16	Funds	—		—0—
	Outreach and			
	Education ..	—	—0—	
	Technical			
	Assistance ..	—	—0—	
	Cultural Center			
	Programs...	—	—0—	
17	Historical			
18	Preservation	—0—		—0—
19	Washington			
20	Carver			
21	Camp	—		—0—
22	Grants, Fairs			
23	and Festivals ...	—		—0—
24	Independence Hall	—		—0—
25	Total	\$ 806,140		\$ 3,992,865

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

26 Any unexpended balance remaining in the appropri-
 27 ation for Washington Carver Camp (account no. 3510-
 28 05) at the close of the fiscal year 1986-87 is hereby
 29 reappropriated for expenditure during the fiscal year
 30 1987-88.

31 The Unclassified appropriation includes funding for
 32 the Arts and Humanities Fund (account nos. 3515-00,
 33 01, 05), Department Programming Funds (account nos.
 34 3520-06, 07, 08), Grants, Fairs and Festivals (account no.
 35 3510-04) and Washington Carver Camp (account no.
 36 3510-05) and shall be expended only upon authorization
 37 of the department of culture and history and in
 38 accordance with the provisions of chapter five-a and
 39 article three, chapter twelve of the code.

40 All federal moneys received as reimbursement to the
 41 department of culture and history for moneys expended
 42 from the general revenue fund for the Arts and
 43 Humanities Fund and Historical Preservation are
 44 hereby reappropriated for the purposes as originally
 45 made, including personal services, current expenses and
 46 equipment.

CORRECTIONS

43—Probation and Parole Board

(WV Code Chapter 62)

Acct. No. 3650

1	Salaries of Members			
2	of Board			
3	of Probation and Parole . . . \$	—	\$	81,000*
4	Unclassified	—		48,700
5	Other Personal Services	—		—0—
6	Annual Increment	—		—0—
7	Current Expenses	—		—0—
8	Repairs and Alterations	—		—0—
9	Equipment	—		—0—
10	Total \$	—	\$	129,700

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

44—Department of Corrections— Central Office

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

Acct. No. 3680

1	Unclassified \$	—	\$	632,675*
2	Personal Services	—		—0—
3	Annual Increment	—		—0—
4	Current Expenses	—		—0—
5	Repairs and			
6	Alterations	—		—0—
7	Equipment	—		—0—
8	Total \$	—	\$	632,675

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

45—Department of Corrections—
Correctional Units

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

Acct. No. 3770

1	Unclassified	\$	—	\$	21,683,373
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—		—0—
	Inmate Medical				
	Expenses		—	—0—	
	Other		—	—0—	
5	Repairs and				
6	Alterations		—		—0—
7	Equipment		—		—0—
8	Capital Outlay		—		—0—
9	Pruntytown				
10	Facility—				
11	Unclassified		—		—0—
12	Total	\$	—	\$	21,683,373

13 Any unexpended balances remaining in the appropri-
 14 ations for Capital Outlay (account no. 3770-04) and
 15 Pruntytown Facility—Unclassified (account no. 3770-07)
 16 at the close of the fiscal year 1986-87 are hereby
 17 reappropriated for expenditure during the fiscal year
 18 1987-88.

19 The commissioner of corrections, prior to the begin-
 20 ning of the fiscal year, shall file with the legislative
 21 auditor an expenditure schedule for each formerly
 22 separate spending unit which has been consolidated into
 23 the above account and which receives a portion of the
 24 above appropriation. He shall also, within fifteen days
 25 after the close of each six-month period of said fiscal
 26 year, file with the legislative auditor an itemized report
 27 of expenditures made during the preceeding six-month
 28 period. Such report shall include the total of expendi-
 29 tures made for personal services, annual increment,
 30 current expenses (inmate medical expenses and other),
 31 repairs and alternations and equipment.

HEALTH AND HUMAN SERVICES

*46—State Department of Health—
Central Office*

(WV Code Chapter 16)

Acct. No. 4000

1	Personal Services	\$	—	\$	5,756,325*
2	Annual Increment		—		132,848
3	Current Expenses		—		4,482,499
4	Repairs and Alterations		—		4,000
5	Equipment		—		166,915
6	Special Olympics		—		28,000
7	State Aid to Local Agencies		—		—0—
8	Grants to Counties				
9	and EMS Entities		—		—0—
10	Maternal and Child				
11	Health Clinics, Clinicians				
12	and Medical Contracts				
13	and Fees		—		—0—
14	Foster Grandparents				
15	Stipends/Travel		—		62,370
16	Hemophiliac Assistance				
17	Program		—		132,412
18	Annual Increment		—		760
19	Poison Control Hot Line		—		150,000
20	Primary Care Contracts to				
21	Community Health Centers		—		—0—
22	Agent Orange		—		—0—
23	Annual Increment		—		—0—
24	Corporate Nonprofit				
25	Community Health				
26	Centers—				
27	F.M.H.A. Mortgage				
28	Finance		—		105,913
29	Epidemiology Research		—		—0—
30	Total	\$	—	\$	11,022,042

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

31 Any unexpended balances remaining in the appropri-
 32 ations for Placement Programs for the Developmentally
 33 Disabled (account no. 4000-13), Agent Orange (account
 34 no. 4000-17) and Reimbursement to Community Mental
 35 Health and Mental Retardation Centers (account no.
 36 4201-18) at the close of the fiscal year 1986-87 are
 37 hereby reappropriated for expenditure during the fiscal
 38 year 1987-88.

*47—Department of Veterans' Affairs—
 Veterans' Home*

(WV Code Chapter 9A)

Acct. No. 4010

1	Unclassified	\$	516,400	\$	960,729
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—0—		—0—
5	Repairs and Alterations		—		—
6	Equipment		—		—
7	Total	\$	516,400	\$	960,729

8 Any unexpended balances remaining in the appropri-
 9 ations for Repairs and Alterations (account no. 4010-02)
 10 and Equipment (account no. 4010-03) at the close of the
 11 fiscal year 1986-87 are hereby reappropriated for
 12 expenditure during the fiscal year 1987-88.

*48—Resource Recovery—
 Solid Waste Disposal Authority*

(WV Code Chapter 16)

Acct. No. 4020

1	Unclassified	\$	—	\$	103,158
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—		—0—
5	Equipment		—		—0—
6	Total	\$	—	\$	103,158

49—Department of Veterans' Affairs
(WV Code Chapter 9A)

Acct. No. 4040

1	Unclassified	\$ —	\$ 703,177*
2	Personal Services	—	—0—
3	Annual Increment	—	—0—
4	Current Expenses	—	—0—
5	Equipment	—	—0—
6	Educational		
7	Opportunities for		
8	Children of War Veterans ..	—	—0—
9	In Aid of Veterans Day		
10	Patriotic Exercises	—	—0—
11	Total	\$ —	\$ 703,177

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

50—Department of Human Services
(WV Code Chapters 9, 48 and 49)

Acct. No. 4050

1	Unclassified	\$122,134,887	\$ 66,303,910*
2	Personal Services	—0—	—0—
3	Annual Increment	—0—	—0—
4	Current Expenses	—0—	—0—
5	Repairs and Alterations	—0—	—0—
6	Equipment	—0—	—0—
7	Assistance Payments	—0—	—0—
8	Social Security		
9	Matching Fund	—0—	—0—
10	Indigent Burials	—	—0—
11	Social Services	—0—	—0—
12	Emergency Assistance	—0—	—0—
13	TRIP	—	—0—
14	Food Stamps (Value)	160,000,000†	—
15	Government Donated Food		
16	(Value)	26,000,000†	—
17	Public Employees		
18	Retirement Matching	—0—	—0—

19	Public Employees		
20	Health Insurance	—0—	—0—
21	Child Support Enforcement		
22	Personal Services	—	900,000
23	Total	\$122,134,887	\$ 67,203,910

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

†For information only—not included in total

51—State Commission on Aging

(WV Code Chapter 29)

Acct. No. 4060

1	Unclassified	\$ 9,950,139	\$ 3,709,638
2	Personal Services	—0—	—0—
3	Annual Increment	—0—	—0—
4	Current Expenses	—0—	—0—
5	Equipment	—0—	—
6	Programs for		
7	Elderly	—	—0—
	Pass Through		
	Programs...	—	—0—
	Nutrition		
	Program ...	—	—0—
	In-Home		
	Service		
	Program ...	—	—0—
	Public Trans-		
	portation ...	—	—0—
8	Golden		
	Mountaineer		
9	Program	—	—0—
	Personal		
	Services	—	—0—
	Annual		
	Increment ..	—	—0—
	Other		
	Expenses ...	—	—0—
10	Silver Haired		
11	Legislature	—	—0—

12	To Local Entities	—0—	—0—
13	Senior Citizen		
14	Centers—Land		
15	Acquisition,		
16	Construction,		
17	Repairs and		
18	Alterations	—	—0—
19	Total	\$ 9,950,139	\$ 3,709,638

20 Any unexpended balance remaining in the appropri-
 21 ation for Senior Citizen Centers—Land Acquisition,
 22 Const./R and A (account no. 4060-10) at the close of the
 23 fiscal year 1986-87 is hereby reappropriated for expen-
 24 diture during the fiscal year 1987-88.

*52—State Department of Health—
 Medical Facilities (Control)*

(WV Code Chapter 16)

Acct. No. 4180

1 Unclassified—Total \$ — \$ —0—

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

12 Additional funds have been appropriated in account
 13 no. 8500 for operation of the medical facilities.

53—Consolidated Medical Services Fund

Acct. No. 4190

1	Medical Services Program ..	\$158,102,864	\$ 50,000,000
2	Institutional Facilities		
3	Operations	20,000,000	44,571,023

4	Reimbursement to		
5	Community		
6	Mental Health & Mental		
7	Retardation Centers	—	20,283,932
8	Reimbursement to		
9	Community		
10	Behavioral Health		
11	Programs		
12	for Social Services	—	1,532,950
13	MH/MR Special Projects	—	1,900,000
14	State Aid to Local Agencies	—	6,527,898
15	Maternal and Child Health		
16	Clinics, Clinicians and		
17	Medical Contracts and		
18	Fees	—	2,600,000
19	Placement Programs for the		
20	Developmentally Disabled	—	3,842,750
21	Primary Care Contracts to		
22	Community Health		
23	Centers	—	2,705,587
24	Agent Orange	—	206,517
25	Annual Increment	—	486
26	Alcohol, Drug Abuse and DD	—	2,846,200
27	Epidemiology Research	—	263,036
28	Grants to Counties and EMS		
29	Entities	—	1,790,000
30	Behavioral Health Program	—0—	1,277,000
31	Unclassified	23,062,954	—
32	Total	\$201,165,818	\$140,347,379

33 For the purpose of maximizing the amount of federal
34 funds receivable in the area of health care programs and
35 their use in related health oriented activities, functions
36 and for related facilities by state spending units, which
37 purpose is legislatively recognized as a paramount and
38 overriding consideration, this new Consolidated Medical
39 Services Fund is hereby budgetarily established and
40 provided, together with direction for the undertaking
41 and authorized authority of the director of the depart-
42 ment of health; and as the same was conceptually
43 developed at this regular session for such purpose and
44 for providing maximum flexibility towards such result;

45 provided that the separate items will nevertheless
46 control and govern such appropriations.

47 Into this special account and fund, established in the
48 state treasury, shall be placed, either by initial deposit
49 or by transfer, state appropriations received and so
50 useable; federal funds received and so useable; third
51 party payee amounts received by the department of
52 health or donor receipts or grants so useable; with
53 deposits and transfers to or payments from this fund to
54 occur as determined as necessary by such authority,
55 notwithstanding any present or prior provision or
56 restraint outstanding or impeding to the contrary.

57 Balances in this fund, including any accrued interest
58 amounts, shall not expire or revert elsewhere at the
59 close of the fiscal year, but shall remain for subsequent
60 appropriation.

61 The director of health, prior to the beginning of the
62 fiscal year, shall file with the legislative auditor an
63 expenditure schedule for each formerly separate
64 spending unit which has been consolidated into the
65 above account and which receives a portion of the above
66 appropriation. He shall also, within fifteen days after
67 the close of each six-month period of said fiscal year, file
68 with the legislative auditor an itemized report of
69 expenditures made during the preceding six-month
70 period.

71 Additional funds have been appropriated in account
72 no. 8500 for operation of the medical facilities.

*54—State Board of Education—
Rehabilitation Division*

(WV Code Chapter 18)

Acct. No. 4405

1	Unclassified	\$ 26,993,290	\$10,368,448
2	Personal Services	—0—	—0—
3	Annual Increment	—0—	—0—
4	Current Expenses	—0—	—0—
5	Repairs and Alterations	—0—	—

6	Equipment	—0—	—0—
7	Case Services	—0—	—0—
8	Social Security Matching		
9	Fund	—0—	—0—
10	WVU Reimbursement	—0—	—0—
11	Workshop Development	—	—0—
12	Blind Services		
13	Coordinating Unit	—	—0—
14	Disability Determination—		
15	Medical Payments	—0—	—
16	Total	\$ 26,993,290	\$ 10,368,448

BUSINESS AND INDUSTRIAL RELATIONS*55—Department of Labor*

(WV Code Chapters 21 and 47)

Acct. No. 4500

1	Unclassified	\$ 304,873	\$ 1,137,068*
2	Personal Services	—0—	—0—
3	Annual Increment	—0—	—0—
4	Current Expenses	—0—	—0—
5	Repairs and Alterations	—	—0—
6	Equipment	—0—	—0—
7	Total	\$ 304,873	\$ 1,137,068

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

56—Department of Commerce

(WV Code Chapter 5B)

Acct. No. 4625

1	Unclassified	\$ —	\$ 8,024,122*
2	Personal Services	—	—0—
3	Annual Increment	—	—0—
4	Current Expenses	—	—0—
5	Repairs and Alterations	—	—0—
6	Equipment	—	—0—
7	State Parks—Capital Outlay	—	—0—
8	Total	\$ —	\$ 8,024,122

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

9 Any unexpended balances remaining in the appropri-
 10 ations for Chief Logan State Park (account no. 4625-64),
 11 Cacapon State Park (account no. 4625-65) and Capital
 12 Outlay (account no. 4625-10) at the close of the fiscal
 13 year 1986-87 are hereby reappropriated for expenditure
 14 during the fiscal year 1987-88.

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

*57—Interstate Commission on
 Potomac River Basin*

(WV Code Chapter 29)

Acct. No. 4730

1	West Virginia's			
2	Contribution			
3	to the Interstate			
4	Commission			
5	on Potomac River			
6	Basin—Total	\$	—	\$ 20,300

*58—Ohio River Valley Water
 Sanitation Commission*

(WV Code Chapter 29)

Acct. No. 4740

1	West Virginia's Contribution			
2	to the Ohio River Valley			
3	Water Sanitation			
4	Commission—Total	\$	—	\$ 56,681

*59—West Virginia Air Pollution
 Control Commission*

(WV Code Chapter 16)

Acct. No. 4760

1	Unclassified	\$	1,244,159	\$	806,245
2	Personal Services		—0—		—0—
3	Annual Increment		—0—		—0—
4	Current Expenses		—0—		—0—

5	Equipment	—0—	—0—
6	Total	\$ 1,244,159	\$ 806,245

60—Department of Energy

(WV Code Chapter 22)

Acct. No. 4775

1	Unclassified	\$ 32,311,985	\$ 5,367,740*
2	Personal Services	—0—	—0—
3	Annual Increment	—0—	—0—
4	Current Expenses	—0—	—0—
5	Repairs and Alterations	—0—	—0—
6	Equipment	—0—	—0—
7	Total	\$ 32,311,985	\$ 5,367,740

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

61—State Athletic Commission

(WV Code Chapter 29)

Acct. No. 4790

1	Unclassified—Total	\$ —	\$ 5,500
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62—West Virginia Nonintoxicating Beer Commissioner

(WV Code Chapter 11)

Acct. No. 4900

1	Unclassified	\$ —	\$ 352,220*
2	Personal Services	—	—0—
3	Annual Increment	—	—0—
4	Current Expenses	—	—0—
5	Equipment	—	—0—
6	Total	\$ —	\$ 352,220

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

63—*West Virginia Racing Commission*

(WV Code Chapter 19)

Acct. No. 4950

1	Unclassified	\$	—	\$	1,077,134
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—		—0—
5	Equipment		—		—0—
6	Total	\$	—	\$	1,077,134

AGRICULTURE

64—*Department of Agriculture*

(WV Code Chapter 19)

Acct. No. 5100

1	Salary of				
2	Commissioner...\$	—		\$	46,800
3	Unclassified	921,242			3,196,647
4	Other Personal				
5	Services	—0—			—0—
6	Annual Increment	—0—			—0—
7	Current Expenses	—0—			—0—
8	Equipment	—0—			—0—
9	Multiflora Rose				
10	Eradication				
11	Program	—			—0—
12	Gypsy Moth				
	Program	—			—0—
13	Forestry Division	—0—			—0—
	Personal				
	Services	—	—0—		
	Annual				
	Increment	—	—0—		
	Current				
	Expenses	—	—0—		
	Repairs and				
	Alterations ...	—	—0—		
	Equipment	—	—0—		
14	Total	\$ 921,242		\$	3,243,447

15 Out of the above general revenue funds a sum may

- 16 be used to match federal funds for the eradication and
17 control of pest and plant disease.

65—*Farm Management Commission*

(WV Code Chapter 19)

Acct. No. 5110

1 Unclassified—Total\$ — \$ 1,600,000

66—*Department of Agriculture—
Soil Conservation Committee*

(WV Code Chapter 19)

Acct. No. 5120

1	Unclassified	\$	—	\$	836,227
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—		—0—
5	Watershed Expenses		—		—0—
6	Total	\$	—	\$	836,227

- 7 Any unexpended balances remaining in the appropri-
8 ations for Watershed Program (account no. 5120-06) and
9 Mud River Flood Control Project (account no. 5120-07)
10 at the close of the fiscal year 1986-87 are hereby
11 reappropriated for expenditure during the fiscal year
12 1987-88.

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

(WV Code Chapter 19)

Acct. No. 5130

1	Unclassified	\$	—	\$	899,190
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—		—0—
5	Equipment		—		—0—
6	Total	\$	—	\$	899,190

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

68—*Department of Agriculture—
Meat Inspection*

(WV Code Chapter 19)

Acct. No. 5140

1	Unclassified	\$ 768,666	\$ 465,862
2	Personal Services	—0—	—0—
3	Annual Increment	—0—	—0—
4	Current Expenses	—0—	—0—
5	Equipment	—0—	—0—
6	Total	\$ 768,666	\$ 465,862

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

69—*Department of Agriculture—
Agricultural Awards*

(WV Code Chapter 19)

Acct. No. 5150

1	Agricultural Awards	\$ —	\$ 70,000
2	Fairs and Festivals	—	200,450
3	Total	\$ —	\$ 270,450

70—*Department of Agriculture
Forestry Division*

(WV Code Chapter 19)

Acct. No. 5160

1	Unclassified	\$ 342,900	\$ 2,141,010*
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2	Cooperative Forest		
3	Resource Study	—	178,000
4	Total	\$ 342,900	\$ 2,319,010

*Includes salary of the director at \$45,000 per annum.

5 Out of the above general revenue funds, a sum may
6 be used to match federal funds for cooperative studies
7 or other funds for similar purposes.

CONSERVATION AND DEVELOPMENT

71—Geological and Economic Survey

(WV Code Chapter 29)

Acct. No. 5200

1	Unclassified	\$ 214,083	\$ 1,571,033
2	Personal Services	—0—	—0—
3	Annual Increment	—0—	—0—
4	Current Expenses	—0—	—0—
5	Repairs and Alterations	—0—	—0—
6	Equipment	—0—	—0—
7	Special Studies	—	—0—
8	To Secure Federal and		
9	Other Contracts	—	—0—
10	Total	\$ 214,083	\$ 1,571,033

11 Any unexpended balance remaining in the appropri-
12 ation To Secure Federal and Other Contracts (account
13 no. 5200-07) at the close of the fiscal year 1986-87 is
14 hereby reappropriated for expenditure during the fiscal
15 year 1987-88.

16 The Unclassified appropriation includes funding To
17 Secure Federal and Other Contracts and may be
18 transferred to a special revenue account for the purpose
19 of providing advance funding for such contracts.

72—Water Resources Board

(WV Code Chapter 20)

Acct. No. 5640

1	Unclassified	\$ —	\$ 92,504
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2	Personal Services	--	--	0--
3	Annual Increment	--	--	0--
4	Current Expenses	--	--	0--
5	Repairs and Alterations	--	--	0--
6	Equipment	--	--	0--
7	Total	\$ --	\$	92,504

73—Department of Natural Resources

(WV Code Chapter 20)

Acct. No. 5650

1	Unclassified	\$ 8,900,642	\$	4,126,658*
2	Personal Services	--	--	0--
3	Annual Increment	--	--	0--
4	Current Expenses	--	--	0--
5	Repairs and Alterations	--	--	0--
6	Equipment	--	--	0--
7	Transfer to State			
	Spending Units	--	--	0--
8	Land and Buildings	--	--	0--
9	Blackfly Control Program ...	--	--	0--
10	National Institute			
	for Chemical			
11	Studies	--	--	0--
12	Total	\$ 8,900,642	\$	4,126,658

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

*74—Blennerhassett Historical
Park Commission*

(WV Code Chapter 29)

Acct. No. 5660

1	Unclassified	\$ --	\$	389,091
2	Personal Services	--	--	0--
3	Annual Increment	--	--	0--
4	Current Expenses	--	--	0--
5	Repairs and Alterations	--	--	0--
6	Equipment	--	--	0--
7	Total	\$ --	\$	389,091

8 Any unexpended balances remaining in the appropri-
 9 ations for Blennerhassett Island (account no. 5660-07)
 10 and in the item in this account designated Unclassified,
 11 at the close of the fiscal year 1986-87 are hereby
 12 reappropriated for expenditure during the fiscal year
 13 1987-88.

75—*Water Development Authority*

(WV Code Chapter 20)

Acct. No. 5670

1 Any unexpended balances remaining in the appropri-
 2 ations for Phase III Hardship Grants (account no. 5670-
 3 08), Construction Grants — Phase III (account no. 5670-
 4 09), Hardship Grants (account no. 5670-10), Loan and
 5 Grant Program (account no. 5670-17), Capital Outlay —
 6 Sewer (account no. 5670-18), Capital Outlay — Water
 7 (account no. 5670-19) and Capital Outlay — Sewer
 8 (account no. 5670-20) at the close of the fiscal year 1986-
 9 87 are hereby reappropriated for expenditure during
 10 the fiscal year 1987-88.

76—*West Virginia Railroad
 Maintenance Authority*

(WV Code Chapter 29)

Acct. No. 5690

1	Unclassified	\$	225,000	\$	697,759
2	Personal Services		—		—
3	Annual Increment		—		—
4	Current Expenses		—		—
5	Repairs and Alterations		—		—
6	B and O Commuter Service		—		—
7	Total	\$	225,000	\$	697,759

8 Any unexpended balances remaining in the appropri-
 9 ations for Repairs and Alterations (account no. 5690-02)
 10 and Unclassified (account no. 5690-06) at the close of the
 11 fiscal year 1986-87 are hereby reappropriated for
 12 expenditure during the fiscal year 1987-88.

PROTECTION*77—Department of Public Safety*

(WV Code Chapter 15)

Acct. No. 5700

1	Unclassified	\$ 348,926	\$ 24,458,710*
2	Personal Services	—0—	—0—
3	Annual Increment	—0—	—0—
4	Current Expenses	—0—	—0—
5	Repairs and Alterations	—	—0—
6	Equipment	—0—	—0—
7	Emergency Fund	—	—0—
8	Total	\$ 348,926	\$ 24,458,710

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

78—Adjutant General—State Militia

(WV Code Chapter 15)

Acct. No. 5800

1	Unclassified	\$ 840,299	\$ 3,886,094*
2	Personal Services	—	—0—
3	Annual Increment	—	—0—
4	Current Expenses	—	—0—
5	Repairs and Alterations	—	—0—
6	Equipment	—	—0—
7	Compensation of		
8	Commanding		
9	Officers, Clerical		
10	Allowances		
11	and Uniform Allowances ..	—	—0—
12	Property Maintenance	—	—0—
13	Annual Increment	—	—0—
14	State Armory Board	—0—	—0—
15	Annual Increment	—0—	—0—
16	College Education Fund	—	—0—
17	Total	\$ 840,299	\$ 3,886,094

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

BOARDS AND COMMISSIONS

79—*West Virginia Civil Service System*

(WV Code Chapter 29)

Acct. No. 5840

1	Unclassified	\$	—	\$	1,059,422*
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—		—0—
5	Equipment		—		—0—
6	Applicant Services		—		—0—
7	Hearing Examiner		—		—0—
8	Total	\$	—	\$	1,059,422

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

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

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

80—*West Virginia Public Legal
 Services Council*

(WV Code Chapter 29)

Acct. No. 5900

1	Unclassified	\$	—	\$	3,504,104
2	Council and Central Office ..		—		—0—

3	Annual Increment	—	—0—
4	Other Expenses	—	—0—
5	Appointed Counsel Fees	—	—0—
6	Public Defender Operations	—	—0—
7	Criminal Law Research		
8	Center		
9	Appellate Division	—	—0—
10	Total	\$ —	\$ 3,504,104
11	Any unexpended balance remaining in the appropri-		
12	ation for Appointed Counsel Fees (account no. 5900-11)		
13	at the close of the fiscal year 1986-87 is hereby		
14	reappropriated for expenditure during the fiscal year		
15	1987-88.		

81—Human Rights Commission

(WV Code Chapter 5)

Acct. No. 5980

1	Unclassified	\$ 301,509	\$ 530,263
2	Personal Services	—0—	—0—
3	Annual Increment	—0—	—0—
4	Current Expenses	—0—	—0—
5	Equipment	—0—	—0—
6	Total	\$ 301,509	\$ 530,263

82—Women's Commission

(WV Code Chapter 29)

Acct. No. 6000

1	Unclassified	\$ —	\$ 67,025
2	Personal Services	—	—0—
3	Annual Increment	—	—0—
4	Current Expenses	—	—0—
5	Equipment	—	—0—
6	Total	\$ —	\$ 67,025

83—Education Employees Grievance Board

(WV Code Chapter 18)

Acct. No. 6015

1	Unclassified	\$ —	\$ 282,977
---	--------------------	------	------------

2	Personal Services	—	—0—
3	Annual Increment	—	—0—
4	Current Expenses	—	—0—
5	Equipment	—	—0—
6	Total	\$ —	\$ 282,977

84—*West Virginia Public Employees
Retirement Board*

(WV Code Chapter 5)

Acct. No. 6140

1	Employer's Accumulation		
2	Fund	\$ —	\$ 7,544,677
3	Expense Fund	—	—0—
4	Supplemental Benefits		
5	for		
6	Annuitants	—	2,232,000
7	Total	\$ —	\$ 9,776,677

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

85—*West Virginia Public Employees
Insurance Board*

(WV Code Chapter 5)

Acct. No. 6150

1	Unclassified	\$ —	\$ 65,325,167
2	Personal Services	—	—0—
3	Annual Increment	—	—0—

4	Public Employees Health		
5	Insurance State		
6	Contributions.....	—	—0—
7	Total.....	\$ —	\$ 65,325,167

8 Any unexpended balance remaining in the appropri-
 9 ation Public Employees Health Insurance State Contri-
 10 butions (account no. 6150-06) at the close of the fiscal
 11 year 1986-87 is hereby reappropriated for expenditure
 12 during the fiscal year 1987-88.

13 The Unclassified appropriation includes funding to
 14 cover the state's share of public employees health
 15 insurance costs for those spending units operating from
 16 the general revenue fund. The department of highways,
 17 department of motor vehicles, workers' compensation
 18 commissioner, public service commission and other
 19 departments operating from special revenue funds
 20 and/or federal funds shall pay their proportionate share
 21 of the public employees health insurance cost for their
 22 respective divisions. When specific appropriations are
 23 not made, such payments may be made from the
 24 balances in the various special revenue funds in excess
 25 of specific appropriations.

86—Insurance Commissioner

(WV Code Chapter 33)

Acct. No. 6160

1	Unclassified.....	\$ —	\$ 351,694*
2	Personal Services.....	—	—0—
3	Annual Increment.....	—	—0—
4	Current Expenses.....	—	—0—
5	Equipment.....	—	—0—
6	Total.....	\$ —	\$ 351,694

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

87—State Fire Commission

(WV Code Chapter 29)

Acct. No. 6170

1	Unclassified.....	\$ —	\$ 813,300
---	-------------------	------	------------

2	Personal Services	—	—0—
3	Annual Increment	—	—0—
4	Current Expenses	—	—0—
5	Repairs and Alterations	—	—0—
6	Equipment	—	—0—
7	Total	\$ —	\$ 813,300

1	Total Title II, Section I—		
2	General Revenue		\$1,490,215,893

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

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

8 Any unexpended balances remaining for federal funds
 9 at the close of the fiscal year 1986-87 are hereby
 10 reappropriated for expenditure during the fiscal year
 11 1987-88.

88—West Virginia Department of Highways

(WV Code Chapters 17 and 17C)

Acct. No. 6700

TO BE PAID FROM STATE ROAD FUND

	Federal Funds Fiscal Year 1987-88	Other Funds Fiscal Year 1987-88
1 Maintenance, Expressway,		
2 Trunkline and Feeder	—	\$ 55,000,000

3	Maintenance, State		
4	Local Services	—	77,062,000
5	Maintenance, Contract		
6	Paving		
7	and Secondary Roads		
8	Maintenance	—	15,500,000
9	Inventory Revolving	—	1,500,000
10	Toll Road Examination	—	500,000
11	Equipment Revolving	—	16,105,000
12	General Operations	—	23,821,000*
13	Annual Increment	—	225,000
14	Debt Service	—	80,900,000
15	Interstate Construction	—	112,481,000
16	Other Federal Aid Programs	—	186,514,000
17	Appalachian Program	—	36,817,000
18	Nonfederal Aid Construction	—	5,358,000
19	Total	\$ —	\$611,783,000

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

20 The above appropriations are to be expended in
21 accordance with the provisions of chapters seventeen
22 and seventeen-c of the code.

23 The commissioner of highways shall have the author-
24 ity to operate revolving funds within the state road fund
25 for the operation and purchase of various types of
26 equipment used directly and indirectly in the construc-
27 tion and maintenance of roads and for the purchase of
28 inventories and materials and supplies.

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

34 Funds appropriated on line 12, Annual Increment,
35 shall be transferred to line 11, General Operations, only
36 as required.

89—*Department of Motor Vehicles*

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

Acct. No. 6710

TO BE PAID FROM STATE ROAD FUND

1	Unclassified	\$	—	\$	6,211,371*
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—		—0—
5	Equipment		—		—0—
6	Purchase of License Plates ..		—		—0—
7	Social Security Matching ...		—		—0—
8	Public Employees				
9	Retirement				
10	Matching		—		—0—
11	Public Employees				
12	Health Insurance		—		—0—
13	Total	\$	—	\$	6,211,371

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

90—*State Department of Education—
Veterans' Education*

(WV Code Chapter 18)

Acct. No. 7979

TO BE PAID FROM FEDERAL FUNDS

1	Unclassified	\$	130,413	\$	—
2	Personal Services		—0—		—
3	Annual Increment		—0—		—
4	Current Expenses		—0—		—
5	Equipment		—0—		—
6	Total	\$	130,413	\$	—

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

9 Federal funds in excess of the amounts hereby
10 appropriated may be made available by budget amend-
11 ment upon request of the state superintendent of schools

12 and approval of the governor for any emergency which
 13 might arise in the operation of this division during the
 14 fiscal year.

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

(WV Code Chapters 12 and 36)

Acct. No. 8000

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$	—	\$	168,700
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—		—0—
5	Total	\$	—	\$	168,700

92—Real Estate Commission

(WV Code Chapter 47)

Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$	—	\$	231,914
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—		—0—
5	Equipment		—		—0—
6	Total	\$	—	\$	231,914

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

93—Insurance Commissioner

(WV Code Chapter 33)

Acct. No. 8016

TO BE PAID FROM SPECIAL REVENUE FUND

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

94—Regional Jail and Prison Authority

(WV Code Chapter 31)

Acct. No. 8051

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$	—	\$	392,042
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—		—0—
5	Repairs and Alterations		—		—0—
6	Equipment		—		—0—
7	Total	\$	—	\$	392,042

95—West Virginia Racing Commission

(WV Code Chapter 19)

Acct. No. 8080

TO BE PAID FROM SPECIAL REVENUE FUND

1	Medical Expenses—Total ...	\$	—	\$	120,000
---	----------------------------	----	---	----	---------

2 The total amount of this appropriation shall be paid
 3 from the special revenue fund out of collections of
 4 license fees and fines as provided by law.

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

96—Auditor’s Office—

Land Department Operating Fund

(WV Code Chapters 11A, 12 and 36)

Acct. No. 8120

TO BE PAID FROM SPECIAL REVENUE FUND

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

*97—State Board of Education—Rehabilitation
 Division—West Virginia Rehabilitation
 Center—Special Account
 (WV Code Chapter 18)*

Acct. No. 8137

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	\$ —	\$ 600,000
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2 The total amount of this appropriation shall be paid
 3 from special revenue funds out of receipts collected
 4 pursuant to section six-a, article ten-a, chapter eighteen
 5 of the code.

*98—Department of Finance and Administration—
 Division of Purchasing—Revolving Fund
 (WV Code Chapter 5A)*

Acct. No. 8140

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$ —	\$ 1,364,950
2	Personal Services	—	—0—
3	Annual Increment	—	—0—
4	Current Expenses	—	—0—
5	Equipment	—	—0—
6	Social Security Matching ...	—	—0—
7	Public Employees		
8	Retirement Matching	—	—0—
9	Public Employees		
10	Health Insurance	—	—0—
11	Total	\$ —	\$ 1,364,950

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

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

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

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

(WV Code Chapter 5A)

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$	—	\$	7,699,542
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—		—0—
5	Equipment		—		—0—
6	Social Security Matching ...		—		—0—
7	Public Employees				
8	Retirement Matching		—		—0—
9	Public Employees				
10	Health Insurance		—		—0—
11	Total	\$	—	\$	7,699,542

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

100—Department of Agriculture

(WV Code Chapter 19)

Acct. No. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$	—	\$	597,109
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—		—0—
5	Social Security Matching ...		—		—0—
6	Public Employees				
7	Retirement Matching		—		—0—
8	Public Employees				
9	Health Insurance		—		—0—
10	Total	\$	—	\$	597,109

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

101—General John McCausland Memorial Farm

(WV Code Chapter 19)

Acct. No. 8194

TO BE PAID FROM SPECIAL REVENUE FUND

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

102—Board of Barbers and Beauticians

(WV Code Chapters 16 and 30)

Acct. No. 8220

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$	—	\$	259,053
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—		—0—
5	Equipment		—		—0—
6	Total	\$	—	\$	259,053

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

103—Public Service Commission

(WV Code Chapter 24)

Acct. No. 8280

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$	83,705	\$	5,476,457*
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—0—		—0—
5	Repairs and Alterations		—		—0—
6	Equipment		—		—0—

7	Social Security Matching ...	—	—0—
8	Public Employees		
9	Retirement Matching	—	—0—
10	Public Employees		
11	Health Insurance	—	—0—
12	Headquarters Building		
13	County		
14	Plans	—	—0—
15	Total	\$ 83,705	\$ 5,476,457

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

16 Any unexpended balance remaining in the appropri-
 17 ation for Headquarters Building Development (account
 18 no. 8280-10) at the close of the fiscal year 1986-87 is
 19 hereby reappropriated for expenditure during the fiscal
 20 year 1987-88.

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

104—Public Service Commission—

Gas Pipeline Division

(WV Code Chapter 24B)

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$ 47,913	\$ 226,347*
2	Personal Services	—0—	—0—
3	Annual Increment	—	—0—
4	Current Expenses	—0—	—0—
5	Equipment	—	—0—
6	Social Security Matching ...	—	—0—
7	Public Employees		
8	Retirement Matching	—	—0—
9	Public Employees		
10	Health Insurance	—	—0—
11	Total	\$ 47,913	\$ 226,347

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

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

*105—Public Service Commission—
 Motor Carrier Division*

(WV Code Chapter 24A)

Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$ 392,196	\$ 1,708,490*
2	Personal Services	—0—	—0—
3	Annual Increment	—	—0—
4	Current Expenses	—0—	—0—
5	Equipment	—0—	—0—
6	Social Security Matching ...	—	—0—
7	Public Employees		
8	Retirement Matching	—	—0—
9	Public Employees		
10	Health Insurance	—	—0—
11	Total	\$ 392,196	\$ 1,708,490

*Includes salaries of three members at \$7,900 each per annum

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

*106—Public Service Commission—
 Consumer Advocate*

(WV Code Chapter 24)

Acct. No. 8295

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$ —	\$ 660,287
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2	Personal Services	—	—0—
3	Annual Increment	—	—0—
4	Current Expenses	—	—0—
5	Equipment	—	—0—
6	Social Security Matching ...	—	—0—
7	Public Employees		
8	Retirement Matching	—	—0—
9	Public Employees		
10	Health Insurance	—	—0—
11	Total	\$ —	\$ 660,287

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

107—Department of Natural Resources

(WV Code Chapter 20)

Acct. No. 8300

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$ —	\$ 8,193,147
2	Personal Services	—	—0—
3	Annual Increment	—	—0—
4	Current Expenses	—	—0—
5	Repairs and Alterations	—	—0—
6	Equipment	—	—0—
7	Land Purchase and		
8	Buildings	—	—0—
9	Total	\$ —	\$ 8,193,147

10 Any unexpended balance remaining in the appropri-
 11 ation for Land Purchase and Buildings (account no.
 12 8300-09) at the close of the fiscal year 1986-87 and
 13 available for capital improvement and land purchase
 14 purposes is hereby reappropriated for expenditure in
 15 the fiscal year 1987-88, all in accordance with section
 16 thirty-four, article two, chapter twenty of the code.

17 The total amount of this appropriation shall be paid

18 from a special revenue fund out of fees collected by the
 19 department of natural resources. Expenditures shall be
 20 limited to the amounts appropriated except for federal
 21 funds received and special funds collected.

*108—West Virginia Hospital
 Finance Authority*

(WV Code Chapter 16)

Acct. No. 8330

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	\$	—	\$	120,127
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2 The total amount of this appropriation shall be paid
 3 from the special revenue fund out of fees and collections
 4 as provided by article twenty-nine-a, chapter sixteen of
 5 the code.

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

*109—Department of Public Safety—
 Inspection Fees*

(WV Code Chapter 15)

Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$	—	\$	664,002
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—		—0—
5	Repairs and Alterations		—		—0—
6	Equipment		—		—0—
7	Total	\$	—	\$	664,002

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

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

(WV Code Chapter 15)

Acct. No. 8355

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$	—	\$	600,000
2	Current Expenses		—		—0—
3	Equipment		—		—0—
4	Total	\$	—	\$	600,000

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

111—Department of Banking

(WV Code Chapter 31A)

Acct. No. 8395

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$	—	\$	1,208,554*
2	Personal Services		—		—0—
3	Annual Increment		—		—0—
4	Current Expenses		—		—0—
5	Equipment		—		—0—
6	Total	\$	—	\$	1,208,554

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

112—Crime Victims Compensation Fund

(WV Code Chapter 14)

Acct. No. 8412

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$	500,000	\$	172,592
2	Personal Services		—		—0—

3	Annual Increment	—	—0—
4	Current Expenses	—	—0—
5	Equipment	—	—0—
6	Victim Compensation Program	—0—	—
7	Total	\$ 500,000	\$ 172,592

8 These funds are intended to be expended for court
9 costs and administrative costs and federal reimburse-
10 ment for compensation paid to crime victims.

*113—State Department of Health—
Hospital Services Revenue Account
(Special Fund)*

(Capital Improvement, Renovation and Operation)

(WV Code Chapter 16)

Acct. No. 8500

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$ —	\$ 34,900,000
2	Administrative	—	—0—
3	Mental Health		
4	Facility Projects-		
5	Capital Outlay		
6	and Renovations	—	—0—
7	Administrative Services—		
8	Capital		
9	Outlay for		
10	Computer Hardware,		
11	Software and		
12	Miscellaneous	—	—0—
13	Emergency Services and		
14	Miscellaneous	—	—0—
15	Andrew S. Rowan—Capital		
16	Outlay and Renovations for		
17	Certification, Life		
18	Safety and		
19	Energy Conservation	—	—0—
20	Colin Anderson Center—		
21	Capital Outlay and		
22	Renovations		

23	for Certification, Life		
24	Safety		
25	and Energy		
26	Conservation	—	—0—
27	Denmar Hospital—Capital		
28	Outlay and Renovations for		
29	Certification, Life Safety		
30	and Energy Conservation	—	—0—
31	Marion Hospital—Capital		
32	Outlay and Renovations for		
33	Certification, Life		
34	Safety and		
35	Energy Conservation	—	—0—
36	Hopemont Hospital—Capital		
37	Outlay and Renovations for		
38	Certification, Life		
39	Safety and		
40	Energy Conservation	—	—0—
41	Huntington Hospital—		
42	Capital		
43	Outlay and		
44	Renovations for		
45	Certification, Life		
46	Safety and		
47	Energy Conservation	—	—0—
48	Contingency for Repairs and		
49	Alterations, Equipment,		
50	Emergency Services and		
51	Miscellaneous	—	—0—
52	Lakin Hospital—Capital		
53	Outlay and Renovations		
54	for Certification, Life		
55	Safety and Energy		
56	Conservation	—	—0—
57	Pinecrest Hospital—Capital		
58	Outlay and Renovations for		
59	Certification, Life Safety		
60	and Energy Conservation	—	—0—
61	Weston Hospital—Capital		
62	Outlay and Renovations for		
63	Certification, Life		
64	Safety and		

65	Energy Conservation	—	—0—
66	Greenbrier Center—Capital		
67	Outlay and Renovations		
68	for Certification, Life		
69	Safety and Energy		
70	Conservation	—	—0—
71	Bond Payment	—	—0—
72	Welch Emergency		
73	Hospital—		
74	Contingency		
75	for Operations	—	—0—
76	DD and Chronic		
77	Mentally Ill		
78	Group Homes	—	—0—
79	Total	\$ —	\$ 34,900,000

80 Any unexpended balances remaining in the appropri-
81 ation for hospital services revenue account at the close
82 of the fiscal year 1986-87 are hereby reappropriated for
83 expenditure during the fiscal year 1987-88.

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

88 Projects are to be paid on a cash basis and made
89 available from the date of passage. Items and projects
90 of this appropriation are to begin as funds become
91 available in the special fund.

92 From the above appropriation \$20,000,000 may be
93 used for medical facilities operations, either in connec-
94 tion with this account or in connection with the item
95 designated Institutional Facilities Operations in the
96 Consolidated Medical Services Fund, account no. 4190.

114—Health Care Cost Review Authority

(WV Code Chapter 16)

Acct. No. 8564

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified \$ — \$ 1,072,356

2	Personal Services	—	—0—
3	Annual Increment	—	—0—
4	Current Expenses	—	—0—
5	Equipment	—	—0—
6	Total	\$ —	\$ 1,072,356

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

115—Geological and Economic Survey

(WV Code Chapter 29)

Acct. No. 8589

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified—Total

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

*116—West Virginia Board of Regents—
Special Capital Improvement Fund*

(WV Code Chapter 18)

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service—Total

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

*117—West Virginia Board of Regents—
State System Registration Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)*

(WV Code Chapter 18)

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service

\$	—	\$	2,397,000
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2	Capital Building Repairs		
3	and Alterations	—	4,500,000
4	(Supplements Operating		
5	Budget of		
6	Colleges		
7	and Universities)		
8	Miscellaneous Projects	—	1,800,000
9	Capital Improvements	—	3,000,000
10	Total	\$ —	\$ 11,697,000

11 Any unexpended balances remaining in prior years'
12 and 1986-87 appropriations are hereby reappropriated
13 for expenditure during the fiscal year 1987-88.

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

19 In light of the reductions in general revenue funding
20 in the board of regents control account no. 2790 below
21 current year, 1986-87 level of funding, \$2,000,000 is
22 hereby made available either from this account and the
23 item designated Capital Improvements or from account
24 no. 8855 and the item therein designated Computer
25 Network System Upgrade (Host and Remote Equip-
26 ment Software acquisition and upgrade) or partly from
27 each but not to exceed such aforesaid amount in total,
28 for use or transfer and use, as determined necessary by
29 the board of regents.

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

(WV Code Chapter 18)

Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years'
2 and 1986-87 appropriations are hereby reappropriated
3 for expenditure during the fiscal year 1987-88.

119—*West Virginia Board of Regents—
State System Tuition Fee—
Special Capital Improvement Fund
(Capital Improvement and
Bond Retirement Fund)
(WV Code Chapter 18)
Acct. No. 8855*

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$	—	\$ 11,160,000
2	Marshall University			
3	Stadium			
4	Debt Service			
5	(Cost \$25,000,000).....	—		—0—
6	Building and			
7	Campus Renewal	—		9,000,000
8	Instructional			
9	Telecommunications/			
10	Satellite Network			
11	Facilities			
12	and Equipment.....	—		925,000
13	Concord College Campus			
14	Develop-			
15	ment (Administration/			
16	Science			
17	Building Renovation)	—		3,500,000
18	Bluefield State College			
19	Campus Development			
20	(Greenbrier			
21	Center			
22	Renovations and			
23	Additions).....	—		475,000
24	Economic Development			
25	Act of			
26	1986 (Equipment			
27	for Regional			
28	Research and Development			
29	Centers in Charleston,			
30	Huntington, Morgantown			
31	and			
32	Wheeling).....	—		2,100,000

33	Computer Network System		
34	Upgrade (Host and		
35	Remote Site		
36	Equipment		
37	Software Acquisition		
38	and Upgrade)	—	6,000,000
39	West Virginia University		
40	Campus Development		
41	(Comer Building		
42	Construction		
43	Supplement)	—	500,000
44	Total	\$ —	\$ 33,660,000

45 Any unexpended balances remaining in prior years'
 46 and in the 1986-87 appropriations are hereby reappropriated for expenditure during the fiscal year 1987-88,
 47 except account number 8855-46 (fiscal year 1986) which
 48 shall expire on June 30, 1987.

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

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

58 In light of the reductions in general revenue funding
 59 in the board of regents control account no. 2790 below
 60 current year, 1986-87 level of funding, \$2,000,000 is
 61 hereby made available either from this account and the
 62 item designated Computer Network System Upgrade
 63 (Host and Remote Site Equipment Software acquisition
 64 and upgrade) or from account no. 8835 and the item
 65 therein designated Capital Improvements, or partly
 66 from each but not to exceed such aforesaid amount in
 67 total, for use or transfer and use, as determined
 68 necessary by the board of regents.

*120—West Virginia Board of Regents—
State System Tuition Fee—
Revenue Bond Construction Fund*

(WV Code Chapter 18)

Acct. No. 8860

TO BE PAID FROM SPECIAL REVENUE FUND

- 1 Any unexpended balances remaining in prior years'
- 2 and in the 1986-87 appropriations are hereby reappropri-
- 3 ated for expenditure during the fiscal year 1987-88.

121—Workers' Compensation Commissioner

(WV Code Chapter 23)

Acct. No. 9000

TO BE PAID FROM WORKERS' COMPENSATION FUND

1	Personal Services	\$ —		\$ 8,537,543*
2	Annual Increment	—		130,212
3	Current Expenses	—		5,437,070
4	Equipment	—		247,850
5	Social Security			
6	Matching	—		619,744
7	Public Employees			
8	Retirement			
9	Matching	—		823,437
10	Public Employees			
11	Health			
12	Insurance	—		937,662
13	Employers' Excess			
14	Liability Fund ..	—		256,953
	Personal			
	Services	—	131,537	
	Annual			
	Increment	—	468	
	Current			
	Expenses	—	81,869	
	Equipment	—	3,100	
	Social Security			
	Matching	—	9,438	

	Public		
	Employees Re-		
	retirement		
	Matching	—	12,541
	Public		
	Employees		
	Health		
	Insurance.....	—	18,000
15	Total	\$ —	\$ 16,990,471

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

16 There is hereby authorized to be paid out of the above
 17 appropriation, the amount necessary for the premiums
 18 on bonds given by the treasurer as bond custodian for
 19 the protection of the workers' compensation fund. This
 20 sum shall be transferred to the state board of insurance.

*122—West Virginia Alcohol Beverage
 Control Commissioner
 (WV Code Chapter 60)
 Acct. No. 9270*

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified	\$ —	\$ 14,945,089*
2	Personal Services	—	—0—
3	Annual Increment	—	—0—
4	Current Expenses	—	—0—
5	Repairs and Alterations	—	—0—
6	Equipment	—	—0—
7	Social Security Matching ...	—	—0—
8	Public Employees		
9	Retirement Matching	—	—0—
10	Public Employees		
11	Health Insurance	—	—0—
12	Total	\$ —	\$ 14,945,089

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

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

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

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

*123—West Virginia University—
 Schools of Health Sciences*

(WV Code Chapter 18)

Acct. No. 9280

TO BE PAID FROM MEDICAL SCHOOL FUND

1	Unclassified	\$	—	\$ 14,985,077
2	Personal Services		—	—0—
3	Annual Increment		—	—0—
4	Current Expenses		—	—0—
5	Repairs and Alterations		—	—0—
6	Equipment		—	—0—
7	Family Practice Residency			
8	Program		—	—0—
9	Capital Outlay		—	—0—
10	Total	\$	—	\$ 14,985,077

11 Any unexpended balances remaining in the appropri-
 12 ations for Capital Outlay (account no. 9280-08) and in
 13 the 1986-87 appropriation for the West Virginia
 14 University—Medical Center at the close of the fiscal
 15 year 1986-87 are hereby reappropriated for expenditure
 16 during the fiscal year 1987-88.

1 **Sec. 5. Awards for claims against the state.—**
 2 There are hereby appropriated, for the remainder of the
 3 fiscal year 1986-87 and to remain in effect until June
 4 30, 1988, from the funds as designated, in the amounts
 5 as specified and for the claimants as named in enrolled
 6 senate bill no. 441, acts, legislature, regular session,
 7 1987-crime victims compensation fund of \$771,025.25
 8 for payment of claims against the state.

9 There are hereby appropriated for the remainder of
 10 the fiscal year 1986-87 and to remain in effect until June
 11 30, 1988, from the funds as designated, in the amounts
 12 as specified and for the claimants as named in enrolled
 13 senate bill nos. 470 and 509, acts, legislature, regular
 14 session, 1987-general revenue funds of \$57,635.63, state
 15 road funds of \$29,431.09, special revenue funds of
 16 \$37,144.87, workers' compensation funds of \$641.96 and
 17 federal funds of \$2,160.98 for payments of claims
 18 against the state.

19 The total of general revenue funds above does not
 20 include payment from the Supreme Court—General
 21 Judicial, account no. 1110, specifically made payable
 22 from the appropriation for the current fiscal year 1986-
 23 87.

1 **Sec. 6. Supplemental and deficiency appropri-**
 2 **ations.**—From the state fund, general revenue, except as
 3 otherwise provided, there are hereby appropriated the
 4 following amounts, as itemized, for expenditure during
 5 the fiscal year one thousand nine hundred eighty-seven
 6 to supplement the 1986-87 appropriations, and to be
 7 available for expenditure upon date of passage.

8 Any unexpended balances remaining in the appropri-
 9 ations at the close of the fiscal year 1986-87 are hereby
 10 reappropriated for expenditure during the fiscal year
 11 1987-88.

124—Department of Natural Resources

Acct. No. 5650

1 Blackfly Control Program . . . \$ — \$ —0—

*125—Department of Corrections—
 Central Office*

Acct. No. 3680

1 Adult Female Offenders
 Contract—
 2 Current Expenses \$ — \$ —0—

*126—Department of Corrections—
Correctional Units*

Acct. No. 3770

1	Personal Services	\$	—	\$	—0—
2	Current Expenses—				
3	Inmate Medical Expenses		—		—0—
4	Total	\$	—	\$	—0—

127—State Department of Education

Acct. No. 2860

1	Tuition Waiver	\$	—	\$	—0—
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1 **Sec. 7. Reappropriations—revenue sharing trust**
2 **fund.**—Any unexpended balances to appropriations
3 made by the 1974, 1975, 1977, 1979, 1980, 1981, 1982,
4 1983, 1984, 1985 and 1986 budget acts and any supple-
5 mentary transfers or redesignations made by the above-
6 listed budget acts from the revenue sharing trust fund
7 at the close of the fiscal year 1986-87 are hereby
8 reappropriated for expenditure during the fiscal year
9 1987-88. The following accounts are to be redesignated
10 as department of highways — Unclassified—Total,
11 account nos. 9705-05, 9705-08, 9705-12, 9772-11, 9781-23
12 and 9745-20; state health department — Unclassified—
13 Total, account nos. 9710-06, 9710-09, 9715-09, 9715-10
14 and 9715-15; department of corrections — Unclassi-
15 fied—Total, account no. 9719-06; governor's office of
16 community and industrial development — Unclassi-
17 fied—Total, account nos. 9720-16, 9721-07, 9721-08 and
18 9721-09; and water development authority — Unclassi-
19 fied—Total, account no. 9743-07.

20 From Account no. 9705-05 above, \$200,000 shall be
21 used for the repair of the Burnsville Bridge in the Town
22 of Burnsville, Braxton County.

1 **Sec. 8. Appropriations from federal block**
2 **grants.**—The following items are hereby appropriated
3 from federal block grants to be available for expendi-
4 ture during the fiscal year 1987-88.

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

Acct. No. 8029

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	216,578
2	Annual Increment		1,962
3	Current Expenses		178,692
4	Equipment		20,000
5	To Local Entities		13,230,000
6	Total	\$	13,647,232

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

Acct. No. 8030

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	1,292,292
2	Annual Increment		20,268
3	Current Expenses		1,158,849
4	Equipment		87,400
5	To Local Entities		29,628,651
6	Transfer to State Spending Units		13,000,000
7	Total	\$	45,187,460

*130—Office of Community and Industrial
Development—Community Service*

Acct. No. 8031

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	116,970
2	Annual Increment		1,440
3	Current Expenses		106,690
4	Equipment		15,258
5	To Local Entities		5,381,754
6	Total	\$	5,622,112

*131—Office of Community and Industrial
Development—Justice Assistance*

Acct. No. 8032

TO BE PAID FROM FEDERAL FUNDS

1	To Local Entities—Total	\$	600,000
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*132—State Department of Education—
Education Grant*

Acct. No. 8242

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	995,103
2	Annual Increment		15,036
3	Current Expenses		543,704
4	Repairs and Alterations		100
5	Equipment		9,355
6	To Local Entities		38,875,171
7	Total	\$	40,438,469

*133—State Department of Health—
Maternal and Child Health*

Acct. No. 8502

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	744,248
2	Annual Increment		10,381
3	Current Expenses		5,783,712
4	Equipment		62,000
5	Total	\$	6,600,341

*134—State Department of Health—
Alcohol, Drug Abuse and Mental Health*

Acct. No. 8503

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	425,041
2	Annual Increment		4,536
3	Current Expenses		4,831,533
4	Equipment		25,917
5	Total	\$	5,287,027

*135—State Department of Health—
Preventive Health*

Acct. No. 8506

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	370,968
2	Annual Increment		3,672
3	Current Expenses		1,105,592
4	Equipment		19,340
5	Total	\$	1,499,572

*136—Department of Health—
Alcohol and Drug Abuse Treatment
and Rehabilitation*

Acct. No. 8510

TO BE PAID FROM FEDERAL FUNDS

1	Unclassified—Total	\$	1,235,544
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*137—Department of Human Services—
Energy Assistance*

Acct. No. 9147

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	1,275,719
2	Annual Increment		46,000
3	Current Expenses		16,761,675
4	Social Security Matching		—0—
5	Public Employees Retirement Matching		—0—
6	Public Employees Health Insurance		—0—
7	Energy Assistance		—0—
8	Social Services		—0—
9	Total	\$	18,083,394

*138—Department of Human Services—
Social Services*

Acct. No. 9161

TO BE PAID FROM FEDERAL FUNDS

1	Personal Services	\$	9,889,751
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2	Annual Increment	213,315
3	Current Expenses	10,823,441
4	Equipment	100,000
5	Social Security Matching	—0—
6	Public Employees	
7	Retirement Matching	—0—
8	Public Employees Health Insurance	—0—
9	Social Services	—0—
10	Total	<u>\$ 21,026,507</u>

1 **Sec. 9. Special revenue appropriations.**—There
2 are hereby appropriated for expenditure during the
3 fiscal year one thousand nine hundred eighty-eight,
4 appropriations made by general law from special
5 revenue which are not paid into the state fund as
6 general revenue under the provisions of section two,
7 article two, chapter twelve of the code: *Provided*, That
8 none of the money so appropriated by this section shall
9 be available for expenditure except in compliance with
10 and in conformity to the provisions of articles two and
11 three, chapter twelve, and article two, chapter five-a of
12 the code, unless the spending unit has filed with the
13 director of the budget, the auditor and the legislative
14 auditor prior to the beginning of each fiscal year:

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

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

1 **Sec. 10. State improvement fund appropri-**
2 **ations.**—Bequests or donations of nonpublic funds,
3 received by the governor on behalf of the state during
4 the fiscal year one thousand nine hundred eighty-eight,
5 for the purpose of making studies and recommendations
6 relative to improvements of the administration and
7 management of spending units in the executive branch
8 of state government, shall be deposited in the state
9 treasury in a separate account therein designated state
10 improvement fund.

11 There are hereby appropriated all moneys so depos-

12 ited during the fiscal year one thousand nine hundred
13 eighty-eight, to be expended as authorized by the
14 governor, for such studies and recommendations which
15 may encompass any problems of organization, proce-
16 dures, systems, functions, powers or duties of a state
17 spending unit in the executive branch, or the betterment
18 of the economic, social, educational, health and general
19 welfare of the state or its citizens.

1 **Sec. 11. Specific funds and collection accounts.—**

2 A fund or collection account, which by law is dedicated
3 to a specific use is hereby appropriated in sufficient
4 amount to meet all lawful demands upon the fund or
5 collection account, and shall be expended according to
6 the provisions of article three, chapter twelve of the
code.

1 **Sec. 12. Specified funds newly available as part**
2 **of state fund, general revenue, through budgetary**
3 **expiration enactments and directed disposition**
4 **thereof.—**Of the money that has been made newly
5 available for appropriation and expenditure through
6 budgetary expiration into the state fund, general
7 revenue of the state, by enactment of enrolled house bill
8 no. 3191 and enrolled house bill no. 3192, in March, 1987
9 at regular session, and in the total amount of
10 \$5,228,232.82 such total amount shall be retained or
11 brought forward by the auditor as follows:

12 (a) Of such total amount \$3,500,000 shall be brought
13 forward to July 1, 1987 for use in connection with
14 providing funding for the appropriations in this budget
15 bill for fiscal year 1987-88; and

16 (b) The remainder of such total amount, aforesaid,
17 shall be retained and available in respect of general
18 appropriations or any specific appropriation thereof
19 made in connection with current fiscal year 1986-87.

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

5 When the officer authorized by law to collect money

6 for the state finds that a sum has been erroneously paid,
7 he shall issue his requisition upon the auditor for the
8 refunding of the proper amount. The auditor shall issue
9 his warrant to the treasurer and the treasurer shall pay
10 the warrant out of the fund into which the amount was
11 originally paid.

1 **Sec. 14. Sinking fund deficiencies.**—There is
2 hereby appropriated to the governor a sufficient amount
3 to meet any deficiencies that may arise in the mortgage
4 finance bond insurance fund of the West Virginia
5 housing development fund which is under the supervi-
6 sion and control of the municipal bond commission as
7 provided by section twenty-b, article eighteen, chapter
8 thirty-one of the code, or in the funds of the municipal
9 bond commission because of the failure of any state
10 agency for either general obligations or revenue bonds
11 or any local taxing district for general obligation bonds
12 to remit funds necessary for the payment of interest and
13 sinking fund requirements. The governor is authorized
14 to transfer from time to time such amounts to the
15 municipal bond commission as may be necessary for
16 these purposes.

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

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

1 **Sec. 16. Appropriations for local governments.**—
2 There are hereby appropriated for payment to counties,

3 districts and municipal corporations such amounts as
 4 will be necessary to pay taxes due counties, districts 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. 17. Total appropriations.**—Where only a total
 2 sum is appropriated to a spending unit, the total sum
 3 shall include personal services, annual increment,
 4 current expenses, repairs and alterations, equipment
 5 and capital outlay, where not otherwise specifically
 6 provided and except as otherwise provided in Sec. 3,
 7 TITLE I.

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

TITLE 3. ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

1 **Section 1. Appropriations conditional.**—The ex-
 2 penditure of the appropriations made by this act, except
 3 those appropriations made to the legislative and judicial
 4 branches of the state government, are conditioned upon
 5 the compliance by the spending unit with the require-
 6 ments of article two, chapter five-a of the code.

7 Where former spending units have been absorbed by
 8 or combined with other spending units by acts of this
 9 legislature, it is the intent of this act that reappropri-
 10 ations shall be to the succeeding or later spending unit
 11 created unless otherwise indicated.

1 **Sec. 2. Constitutionality.**—If any part of this act is
 2 declared unconstitutional by a court of competent
 3 jurisdiction, its decision shall not affect any portion of
 4 this act which remains, but the remaining portion shall

- 5 be in full force and effect as if the portion declared
6 unconstitutional had never been a part of the act.

CHAPTER 123

(S. B. 763—Originating in the Senate Committee on Finance)

[Passed May 13, 1987; in effect July 1, 1987. Vetoed by the Governor. Passed over veto.]

AN ACT supplementing, amending, directing transfer of and causing to expire, monthly, into the state fund, general revenue of the state, the unexpended and unencumbered amounts of accruing interest in the following designated interest accounts or from any principal account, should such interest have been so distributed, earned from July 1, 1987 through June 30, 1988, from accounts: of the West Virginia Geological Survey, Account No. 7929-08I; of the Treasurer's Office-Abandoned and Unclaimed Property, Account No. 8000-12I; of the Treasurer's Office-Investment Pool, Account No. 8004-11I; of the Real Estate Commission, Account No. 8010-22I; of the Office of Community and Industrial Development, Domestic Violence-Operations, Account No. 8026-22I; of the Office of Community and Industrial Development, Domestic Violence-Administration, Account No. 8026-23I; of the Office of Community and Industrial Development, Law-Enforcement Training-Operations, Account No. 8026-24I; of the Office of and Community and Industrial Development, Law-Enforcement Training-Administration, Account No. 8026-25I; of the Office of Community and Industrial Development-Oil Overcharge Refunds, Account No. 8046-10I; of the Regional Jail and Prison Authority, Account No. 8050-06I; of the West Virginia Board of Examiners of Radiologic Technology, Account No. 8079-06I; of the State Tax Department-Chief Inspector, Account No. 8090-06I; of the State Tax Department-Federal Reimbursement, Account No. 8090-07I; of the State Tax Department-County Tax Fund, Account No. 8090-08I; of the Oil and Gas Conservation Commission-Annual Lease Tax, Account No. 8096-06I; of the West Virginia Board of Accoun-

tancy, Account No. 8100-05I; of the West Virginia Board of Dental Examiners, Account No. 8102-15I; of the West Virginia Board of Land Surveyors, Account No. 8103-20I; of the West Virginia Board of Pharmacy, Account No. 8105-30I; of the West Virginia Board of Examiners of Practical Nurses, Account No. 8106-35I; of the West Virginia Board of Registered Nurses, Account No. 8110-55I; of the West Virginia Board of Chiropractic Examiners, Account No. 8130-05I; of the West Virginia Board of Embalmers and Funeral Directors, Account No. 8131-10I; of the Department of Finance and Administration-Revolving Fund, Account No. 8140-08I; of the Department of Finance and Administration-State Agency for Surplus Property, Account No. 8145-45I; of the Department of Finance and Administration-Information Systems Services Division, Account No. 8152-07I; of the Department of Finance and Administration-Transportation Division, Account No. 8157-07I; of the Department of Agriculture-Indirect Cost Funds, Account No. 8185-10I; of the Department of Agriculture-Rural Resources, Account No. 8190-13I; of the Department of Agriculture-Investment Account, Account No. 8194-16I; of the Department of Agriculture, Soil Conservation Committee-Operation Account, Account No. 8195-06I; of the Department of Agriculture-Small Watershed Program, Account No. 8195-09I; of the Department of Corrections-Prison Industries, Account No. 8222-05I; of the Regional Jail Authority, Account No. 8225-75I; of the State Department of Education-Stonewall Jackson Memorial Fund, Account No. 8240-20I; of the State Department of Education-Stonewall Jackson Memorial Fund, Account No. 8240-21I; of the State Department of Education-Textbook Adoption, Account No. 8240-46I; of the State Department of Education-FFA-FHA Camp and Conference Center-Room and Board, Account No. 8245-07I; of the State Department of Education-FFA-FHA Camp and Conference Center-Crafts Program, Account No. 8245-08I; of the State Department of Education-Cedar Lakes, Account No. 8245-12I; of the Department of Employment Security-Interest on Employers Delinquent Contributions, Account No. 8250-08I; of the Department of

Veterans Affairs-Veterans Home Improvement, Account No. 8260-11I; of the Department of Veterans Affairs-Resident Maintenance Collection, Account No. 8260-13I; of the Public Employees Insurance Board-Basic Insurance Premium, Account No. 8265-05I; of the Public Employees Insurance Board-Administration Expense, Account No. 8265-06I; of the Public Employees Insurance Board-Optional Life Insurance Premiums, Account No. 8265-07I; of the State Board of Insurance Premiums and Self Insured Losses, Account No. 8275-06I; of the State Board of Insurance-Professional Liability Trust Fund, Account No. 8275-07I; of the State Board of Insurance-Mine Subsidence Insurance Fund, Account No. 8275-08I; of the Public Service Commission-Special Revenue Administration, Account No. 8280-08I; of the Public Service Commission-Gas Pipeline Division, Account No. 8285-08I; of the Public Service Commission-Motor Carrier Division, Account No. 8290-08I; of the Department of Natural Resources-Watters Smith State Park, Account No. 8320-11I; of the Department of Natural Resources-Investments, Account No. 8325-09I; of the Railroad Maintenance Authority-South Branch Valley Railroad, Account No. 8344-06I; of the Department of Public Safety-Purchase of Investments, Account No. 8350-12I; of the Department of Public Safety-Criminal Investigation, Account No. 8351-29I; of the Department of Public Safety-Purchase of Investments, Account No. 8352-12I; of the Department of Public Safety-Drunk Driving Prevention, Account No. 8355-10I; of the Department of Banking-Revolving Account, Account No. 8392-06I; of the Department of Banking-Purchase of Investments, Account No. 8395-08I; of the Secretary of State-Filing Fees, Account No. 8436-06I; of the Blennerhassett Historical Park, Account No. 8554-06I; of the West Virginia Geological Survey-Publication Sales, Account No. 8590-10I; of WPBY-TV-Operating Account, Account No. 8595-05I; of the WPBY-TV-Grants-Even Fund Years, Account No. 8595-08I; of the WPBY-TV-Capital Expenditure, Account No. 8595-25I; of Grandview Educational TV-Operating Expense, Account No. 8596-06I; of the WSWP-TV-Corporation for Public Broadcasting Grant,

Account No. 8596-16I; of WSWP-TV-Corporation for Public Broadcasting Grant, Account No. 8596-20I; of WSWP-TV-Capital Outlay, Account No. 8596-26I; of Educational Broadcasting Authority-Statewide Service, Account No. 8597-09I; of Educational Broadcasting Authority-Radio Network, Account No. 8597-10I; of Educational Broadcasting Authority-Radio Network, Account No. 8597-11I; of Educational Broadcasting Authority-WV Public Radio, Account No. 8597-14I; of Educational Broadcasting Authority-Microwave Interconnect System, Account No. 8597-17I; of Educational Broadcasting Authority-Capital Outlay-Equipment, Account No. 8597-27I; of WNPB-TV-C.P.B.-A, Account No. 8598-23I; of WNPB-TV-C.P.B.-B, Account No. 8598-24I; of WNPB-TV-C.P.B.-B, Account No. 8598-28I; of the Department of Human Services-Child Abuse, Account No. 9155-36I; of the Economic and Community Development-Industrial Development Loan Fund, Account No. 9290-15I; of the Economic and Community Development-E.D.A.-Title IX Loan Fund, Account No. 9290-20I; of the State Building Commission-Parking Lot Operating, Account No. 9500-08I; of the State Building Commission-Operating Expense Capitol Complex, Account No. 9500-09I; of the State Building Commission-Cafeteria Operating Account, Account No. 9500-12I; of the State Building Commission-Bond Forfeiture, Account No. 9500-15I.

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

WHEREAS, The Legislature has determined that accruing interest in certain designated interest accounts should be expired into the state fund, general revenue of the state, for use for budgetary purposes through the entire fiscal year of 1987-88; and with such interest being so expired monthly throughout such above periods from the interest accounts or from any principal account to which such interest moneys may have been distributed; therefore

Be it enacted by the Legislature of West Virginia:

1 That the accruing interest in the following designated
2 interest accounts, or as may be in the principal accounts
3 thereof if required to be distributed back thereto, shall
4 be supplemented, amended, transferred and caused to
5 expire from such accounts and back into the state fund,
6 general revenue of the state, monthly, and through the
7 entire fiscal year of 1987-88; the designated accounts: of
8 the West Virginia Geological Survey, Account No. 7929-
9 08I; of the Treasurer's Office-Abandoned and Un-
10 claimed Property, Account No. 8000-12I; of the Treas-
11 urer's Office-Investment Pool, Account No. 8004-11I; of
12 the Real Estate Commission, Account No. 8010-22I; of
13 the Office of Community and Industrial Development,
14 Domestic Violence-Operations, Account No. 8026-22I; of
15 the Office of Community and Industrial Development,
16 Domestic Violence-Administration, Account No. 8026-
17 23I; of the Office of Community and Industrial Devel-
18 opment, Law-Enforcement Training-Operations, Ac-
19 count No. 8026-24I; of the Office of Community and
20 Industrial Development, Law-Enforcement Training-
21 Administration, Account No. 8026-25I; of the Office of
22 Community and Industrial Development-Oil Overcharge
23 Refunds, Account No. 8046-10I; of the Regional Jail and
24 Prison Authority, Account No. 8050-06I; of the West
25 Virginia Board of Examiners of Radiologic Technology,
26 Account No. 8079-06I; of the State Tax Department-
27 Chief Inspector, Account No. 8090-06I; of the State Tax
28 Department-Federal Reimbursement, Account No.
29 8090-07I; of the State Tax Department-County Tax
30 Fund, Account No. 8090-08I; of the Oil and Gas
31 Conservation Commission-Annual Lease Tax, Account
32 No. 8096-06I; of the West Virginia Board of Account-
33 tancy, Account No. 8100-05I; of the West Virginia Board
34 of Dental Examiners, Account No. 8102-15I; of the West
35 Virginia Board of Land Surveyors, Account No. 8103-
36 20I; of the West Virginia Board of Pharmacy, Account
37 No. 8105-30I; of the West Virginia Board of Examiners
38 of Practical Nurses, Account No. 8106-35I; of the West
39 Virginia Board of Registered Nurses, Account No. 8110-
40 55I; of the West Virginia Board of Chiropractic
41 Examiners, Account No. 8130-05I; of the West Virginia
42 Board of Embalmers and Funeral Directors, Account

43 No. 8131-10I; of the Department of Finance and
44 Administration-Revolving Fund, Account No. 8140-08I;
45 of the Department of Finance and Administration-State
46 Agency for Surplus Property, Account No. 8145-45I; of
47 the Department of Finance and Administration-Infor-
48 mation Systems Services Division, Account No. 8152-
49 07I; of the Department of Finance and Administration-
50 Transportation Division, Account No. 8157-07I; of the
51 Department of Agriculture-Indirect Cost Funds, Ac-
52 count No. 8185-10I; of the Department of Agriculture-
53 Rural Resources, Account No. 8190-13I; of the Depart-
54 ment of Agriculture-Investment Account, Account No.
55 8194-16I; of the Department of Agriculture, Soil
56 Conservation Committee-Operation Account, Account
57 No. 8195-06I; of the Department of Agriculture-Small
58 Watershed Program, Account No. 8195-09I; of the
59 Department of Corrections-Prison Industries, Account
60 No. 8222-05I; of the Regional Jail Authority, Account
61 No. 8225-75I; of the State Department of Education-
62 Stonewall Jackson Memorial Fund, Account No. 8240-
63 20I; of the State Department of Education-Stonewall
64 Jackson Memorial Fund, Account No. 8240-21I; of the
65 State Department of Education-Textbook Adoption,
66 Account No. 8240-46I; of the State Department of
67 Education-FFA-FHA Camp and Conference Center-
68 Room and Board, Account No. 8245-07I; of the State
69 Department of Education-FFA-FHA Camp and Confer-
70 ence Center-Crafts Program, Account No. 8245-08I; of
71 the State Department of Education-Cedar Lakes,
72 Account No. 8245-12I; of the Department of Employ-
73 ment Security-Interest on Employers Delinquent Con-
74 tributions, Account No. 8250-08I; of the Department of
75 Veterans Affairs-Veterans Home Improvement, Ac-
76 count No. 8260-11I; of the Department of Veterans
77 Affairs-Resident Maintenance Collection, Account No.
78 8260-13I; of the Public Employees Insurance Board-
79 Basic Insurance Premium, Account No. 8265-05I; of the
80 Public Employees Insurance Board-Administration
81 Expense, Account No. 8265-06I; of the Public Em-
82 ployees Insurance Board-Optional Life Insurance
83 Premiums, Account No. 8265-07I; of the State Board of
84 Insurance-Premiums and Self Insured Losses, Account

85 No. 8275-06I; of the State Board of Insurance-Profes-
86 sional Liability Trust Fund, Account No. 8275-07I; of
87 the State Board of Insurance-Mine Subsidence Insu-
88 rance Fund, Account No. 8275-08I; of the Public Service
89 Commission-Special Revenue Administration, Account
90 No. 8280-08I; of the Public Service Commission-Gas
91 Pipeline Division, Account No.8285-08I; of the Public
92 Service Commission-Motor Carrier Division, Account
93 No. 8290-08I; of the Department of Natural Resources-
94 Watters Smith State Park, Account No. 8320-11I; of the
95 Department of Natural Resources-Investments, Account
96 No. 8325-09I; of the Railroad Maintenance Authority-
97 South Branch Valley Railroad, Account No. 8344-06I; of
98 the Department of Public Safety-Purchase of Invest-
99 ments, Account No. 8350-12I; of the Department of
100 Public Safety-Criminal Investigation, Account No. 8351-
101 29I; of the Department of Public Safety-Purchase of
102 Investments, Account No. 8352-12I; of the Department
103 of Public Safety-Drunk Driving Prevention, Account
104 No. 8355-10I; of the Department of Banking-Revolving
105 Account, Account No. 8392-06I; of the Department of
106 Banking-Purchase of Investments, Account No. 8395-
107 08I; of the Secretary of State-Filing Fees, Account No.
108 8436-06I; of the Blennerhassett Historical Park, Account
109 No. 8554-06I; of the West Virginia Geological Survey-
110 Publication Sales, Account No. 8590-10I; of WPBY-TV-
111 Operating Account, Account No. 8595-05I; of the
112 WPBY-TV-Grants-Even Fund Years, Account No. 8595-
113 08I; of the WPBY-TV-Capital Expenditure, Account No.
114 8595-25I; of Grandview Educational TV-Operating
115 Expense, Account No. 8596-06I; of the WSWP-TV-
116 Corporation for Public Broadcasting Grant, Account No.
117 8596-16I; of WSWP-TV-Corporation for Public Broad-
118 casting Grant, Account No. 8596-20I; of WSWP-TV-
119 Capital Outlay, Account No. 8596-26I; of Educational
120 Broadcasting Authority-Statewide Service, Account No.
121 8597-09I; of Educational Broadcasting Authority-Radio
122 Network, Account No. 8597-10I; of Educational Broad-
123 casting Authority-Radio Network, Account No. 8597-
124 11I; of Educational Broadcasting Authority-WV Public
125 Radio, Account No. 8597-14I; of Educational Broadcast-
126 ing Authority-Microwave Interconnect System, Account

127 No. 8597-17I; of Educational Broadcasting Authority-
128 Capital Outlay-Equipment, Account No. 8597-27I; of
129 WNPB-TV-C.P.B.-A, Account No. 8598-23I; of WNPB-
130 TV-C.P.B.-B, Account No. 8598-24I; of WNPB-TV-
131 C.P.B.-B, Account No. 8598-28I; of the Department of
132 Human Services-Child Abuse, Account No. 9155-36I; of
133 the Economic and Community Development-Industrial
134 Development Loan Fund, Account No. 9290-15I; of the
135 Economic and Community Development-E.D.A.-Title
136 IX Loan Fund, Account No. 9290-20I; of the State
137 Building Commission-Parking Lot Operating, Account
138 No. 9500-08I; of the State Building Commission-
139 Operating Expense Capitol Complex, Account No. 9500-
140 09I; of the State Building Commission-Cafeteria Oper-
141 ating Account, Account No. 9500-12I; of the State
142 Building Commission-Bond Forfeiture, Account No.
143 9500-15I.

CHAPTER 124

(H. B. 3207—By Delegate Whitt)

[Passed June 14, 1987; in effect July 1, 1987. Approved by the Governor following language deletions.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-eight, to the Secretary of State, Account No. 2500, supplementing Enrolled Committee Substitute for H. B. 2100, acts of the Legislature, regular session, one thousand nine hundred eighty-seven, known as the budget bill.

Clerk's Note: The two preambles were deleted by the Governor.

Be it enacted by the Legislature of West Virginia:

That Account No. 2500, Enrolled Committee Substitute for H. B. 2100, acts of the Legislature, regular session, one thousand nine hundred eighty-seven, known as the budget bill, be supplemented by adding to such account the following new line item:

- 1 **TITLE 2. APPROPRIATIONS.**
 2 **Section 1. Appropriations from general revenue.**
 3 **INCORPORATING AND RECORDING**
 4 **23—Secretary of State**
 5 **Acct. No. 2500**
 6 7a Excess Levy Special
 7 Election Funding.....\$ — \$1,000,000

8 The purpose of this supplementary appropriation bill
 9 is to provide funds for the special election in respect of
 10 the excess levy for educational purposes, with such
 11 funding being available for expenditure in fiscal year
 12 1987-88.

CHAPTER 125

(S. B. 765—Originating in the Senate Committee on Finance)

[Passed June 14, 1987; in effect from passage.
 Approved by the Governor following language and monetary deletions.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, to the Office of Community and Industrial Development, Account No. 1210, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

Clerk's Note: The preambles were deleted by the Governor.

Be it enacted by the Legislature of West Virginia:

That Account No. 1210, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented by adding to such account the following new line items:

1	TITLE 2. APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	EXECUTIVE		
4	6—Office of Community and		
5	Industrial Development		
6	Acct. No. 1210		
7	***		
8		\$	—
9			
10			—
11			
12			—
13			
14			
15			
16			
17			—
18			
19			—
20			
21			
22			
23			—
24			
25			—
26			
27			—
28			
29			—
30	30w	Total.....	\$ — \$ 931,000

Clerk's Note: Line items 30 through 30v and accompanying dollar amounts were deleted by the Governor.

31 ***
 32
 33
 34
 35
 36

37 Any unexpended balances remaining ***

38

39

40

*** are hereby reappropriated for
 expenditure during the fiscal year 1987-88.

Clerk's Note: Language was deleted by the Governor on lines 31 through 36 and a portion on lines 37 through 39.

CHAPTER 126

(S. B. 766—Originating in the Senate Committee on Finance)

[Passed June 14, 1987; in effect from passage. Approved by the Governor following language deletions.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, to the State Department of Health-Central Office, Account No. 4000, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That Account No. 4000, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented by adding to such account the following new line item:

Clerk's Note: The preambles were deleted by the Governor.

1	TITLE 2. APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	HEALTH AND HUMAN SERVICES		
4	46—State Health Department—		
5	Central Office		
6	Acct. No. 4000		
7	***		
8			
9		***..... \$	— \$6,000
10	***		
11			
12			
13			
14			
15			***
16	Any unexpended balance ***		
17			
18		*** is hereby reappropriated for	
19	expenditure during the fiscal year 1987-88.		

Clerk's Note: The Governor deleted line item 38 through 38b language, language on lines 10 through 15 and a portion on lines 16 through 18.

CHAPTER 127

(S. B. 768—Originating in the Senate Committee on Finance)

[Passed June 14, 1987; in effect from passage.]

Approved by the Governor following language and monetary deletions.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, to the State Commission on Aging, Account No. 4060, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill.

***1

Be it enacted by the Legislature of West Virginia:

That Account No. 4060, chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill, be supplemented by adding to such account the following new line items:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 HEALTH AND HUMAN SERVICES

4 51—State Commission On Aging

5 Acct. No. 4060

6 ***2

7 \$ —

8

9 *** —

10 12d Total \$ — \$20,000

11 ***3

12

13

14

15

16 Any unexpended balance ****4

17

18 *** are hereby reappropriated for

19 expenditure during the fiscal year 1987-88.

Clerk's Note: The Governor deleted the ¹preambles, ²language and monetary amounts on line items 12 through 12c, all ³language on lines 11 through 15 and a ⁴portion of lines 16 through 18.

CHAPTER 128

(S. B. 762—By Senators Craig and Shaw)

[Passed May 28, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred thirty-eight, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to empowering the board of education to promulgate rules and regulations to provide for a policy for refunding the purchase price of any such correspondence course.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CONSUMER CREDIT PROTECTION.

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

- 1 (a) When a buyer has become indebted or paid cash
- 2 on a contract for future deliveries of a correspondence
- 3 course, on any contract entered into after the effective
- 4 date of this section for truck driver, modeling or any
- 5 other occupational or business course with a private
- 6 proprietary school, or a multiple magazine subscriptions
- 7 contract, other than for single subscriptions direct with
- 8 the publisher thereof, the buyer may cancel and
- 9 terminate such contract at any time by mailing a notice
- 10 of cancellation by first class United States mail to the
- 11 person to whom the indebtedness is owed, or with whom
- 12 the contract was made, or his assignee, which notice
- 13 shall forthwith terminate and cancel any financial
- 14 obligation for goods or services not received by the
- 15 buyer prior to the mailing of such notice of cancellation.
- 16 The indebtedness for correspondence course materials
- 17 received and not returned shall not exceed the reasona-
- 18 ble store purchase price of such materials. In addition

* Clerk's Note: This section was also amended by SB 543, which passed March 14, 1987, in effect ninety days from passage.

19 thereto, in regard to a correspondence course contract
20 (in part or wholly by correspondence) the state board of
21 education is hereby empowered and directed to promul-
22 gate rules and regulations setting forth policy for the
23 refund of tuition fees or other indebtedness and
24 cancellation in whole or in part of such a contract by
25 a buyer, with regard to goods and services not fully
26 delivered. Such rules and regulations shall include, but
27 not be limited to, provisions for allowing such cancel-
28 lation by a buyer by mailing notice of intent to cancel
29 and returning all materials received, and that the seller
30 shall return any moneys due buyer within twenty days
31 upon receipt of the notice of cancellation.

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

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

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

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

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

CHAPTER 129

(Com. Sub. for H. B. 2462—By Delegates McCormick and McKinley)

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

AN ACT to amend and reenact section four, article ten,
chapter four of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to scheduling governmental entities and programs for termination.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of governmental entities or programs.

1 The following governmental entities and programs
2 shall be terminated on the date indicated but no
3 governmental entity or program shall be terminated
4 under this article unless a performance audit has been
5 conducted of such entity or program, except as autho-
6 rized under section fourteen of this article:

7 (1) On the first day of July, one thousand nine
8 hundred eighty-one: Judicial council of West Virginia;
9 geological and economic survey commission; motor
10 vehicle certificate appeal board; child welfare licensing
11 board.

12 (2) On the first day of July, one thousand nine
13 hundred eighty-two: Ohio River basin commission;
14 commission on postmortem examination; state
15 commission on manpower, training and technology.

16 (3) On the first day of July, one thousand nine
17 hundred eighty-three: Anatomical board; economic
18 opportunity advisory committee; community develop-
19 ment authority board.

20 (4) On the first day of July, one thousand nine
21 hundred eighty-four: The following programs of the
22 department of natural resources: Rabies control, work
23 incentive program; West Virginia alcoholic beverage
24 control licensing advisory board.

25 (5) On the first day of July, one thousand nine
26 hundred eighty-five: Beautification commission; labor
27 management advisory council.

- 28 (6) On the first day of July, one thousand nine
29 hundred eighty-six: Health resources advisory council.
- 30 (7) On the first day of July, one thousand nine
31 hundred eighty-seven: Civil service commission advisory
32 board; council of finance and administration; and the
33 motorcycle safety standards and specifications board.
- 34 (8) On the first day of July, one thousand nine
35 hundred eighty-eight: Veteran's council; labor manage-
36 ment relations board; board of investments; records
37 management and preservation advisory committee;
38 minimum wage rate board; Ohio River valley water
39 sanitation commission; southern regional education
40 board; department of corrections; board of regents;
41 commission on mass transportation; real estate commis-
42 sion; geological and economic survey; the department of
43 labor; the division of archives and history of the
44 department of culture and history; and the public
45 employees insurance board.
- 46 (9) On the first day of July, one thousand nine
47 hundred eighty-nine: Mental retardation advisory
48 committee; interagency committee on pesticides;
49 commission on charitable organizations; board of school
50 finance; veteran's affairs advisory council; emergency
51 medical services advisory council; pesticides board of
52 review; reclamation commission; information system
53 advisory commission; board of social work examiners.
- 54 (10) On the first day of July, one thousand nine
55 hundred ninety: Consumer affairs advisory council;
56 savings and loan association; forest industries industrial
57 foundation; U.S. geological survey program within the
58 department of natural resources; drivers' license
59 advisory board; the following divisions or programs of
60 the department of agriculture: Soil conservation
61 committee, rural resource division, meat inspection
62 program; women's commission; office of workers'
63 compensation commissioner; and the child advocate
64 office, department of human services.
- 65 (11) On the first day of July, one thousand nine
66 hundred ninety-one: State advisory council of the
67 department of employment security; department of

68 human services; oil and gas conservation commission;
69 the family law masters system; state lottery commission;
70 the department of commerce; and the West Virginia
71 health care cost review authority.

72 (12) On the first day of July, one thousand nine
73 hundred ninety-two: State water resources board; water
74 resources division, department of natural resources;
75 whitewater advisory board; state board of risk and
76 insurance management; West Virginia's membership in
77 the interstate commission on the Potomac River basin;
78 board of banking and financial institutions; state
79 building commission; the capitol building and grounds
80 preservation commission; the board of examiners in
81 counseling; and the public service commission: *Provided,*
82 That in the case of the public service commission, the
83 performance and fiscal audit required by this article
84 shall be completed and transmitted to the joint
85 committee on government and finance on or before the
86 first day of July, one thousand nine hundred ninety-one,
87 in order that the joint committee or its designated
88 subcommittee may review the audit pursuant to the
89 provisions of section one, article one, chapter twenty-
90 four of this code.

91 (13) On the first day of July, one thousand nine
92 hundred ninety-three: Commission on uniform state
93 laws; state structural barriers compliance board; and
94 the oil and gas inspectors examining board.

CHAPTER 130

(H. B. 3203—By Delegate Phillips)

[Passed May 14, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT to amend and reenact section seven-a, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of archives and history, department of culture and history, following an audit by the joint committee on government operations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF CULTURE AND HISTORY.

§29-1-7a. Continuation of division of archives and history.

1 After having conducted a performance and fiscal
2 audit through its joint committee on government
3 operations, pursuant to section nine, article ten, chapter
4 four of this code, the Legislature hereby finds and
5 declares that the division of archives and history should
6 be continued and reestablished. Accordingly, notwith-
7 standing the provisions of section four, article ten,
8 chapter four of this code, the division of archives and
9 history shall continue to exist until the first day of July,
10 one thousand nine hundred eighty-eight.

CHAPTER 131

(S. B. 536—By Senators Brackenrich and Loehr)

[Passed March 19, 1987; in effect July 1, 1987. Vetoed by the Governor. Passed over veto.]

AN ACT to amend article nine, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto five new sections, designated sections one, two, three, four and five; to amend and reenact section two, article nine, chapter eleven of said code; to amend article twelve-a of said chapter eleven by adding thereto a new section, designated section twenty-five; to amend and reenact sections two-d, two-m and twenty-eight, article thirteen of said chapter; to further amend said article thirteen by adding thereto a new section, designated section thirty-one; to amend and reenact sections two, three and four, article thirteen-a of said chapter; to further amend said article thirteen-a by adding thereto a new section, designated section twenty-four; to amend and reenact section two, article thirteen-b of said chapter; to further amend said article thirteen-b by adding thereto a new section, designated section eighteen; to amend and

reenact sections two, four-b, five, six and nine, article fifteen of said chapter; to further amend said article fifteen by adding thereto four new sections, designated sections five-a, nine-b, nine-c and nine-d; to amend and reenact sections two, three and eighteen, article fifteen-a of said chapter; to further amend said article fifteen-a by adding thereto three new sections, designated sections three-b, three-c and three-d; to amend and reenact sections four-e, nine, eleven, twelve, thirteen, fourteen, fifteen, sixteen, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, fifty-one and seventy-four, article twenty-one of said chapter; to further amend said article twenty-one by adding thereto two new sections, designated sections four-f and forty-three; to amend and reenact sections three, seven, nine, thirteen and seventeen, article twenty-three of said chapter; to further amend said article twenty-three by adding thereto a new section, designated section twenty-five; to amend and reenact sections three-a, six and seven, article twenty-four of said chapter; and to further amend said article twenty-four by adding thereto a new section, designated section twenty-three, all relating to enacting the West Virginia tax reform act of 1987; creating voluntary check-off designation for personal income tax refund to gild the capitol dome; creating special fund therefor and specifying use of fund; making certain technical changes in tax laws; creating limited credit for consumers sales and service tax and use tax paid on certain exempt sales against annual tax on incomes of certain carriers, business and occupation tax, severance tax, telecommunications tax, personal income tax, business franchise tax, corporation net income tax or payments for personal income tax withholding; exempting from business and occupation tax gross receipts from sales of certain electric power used in the manufacture of ferroalloy in this state; exempting from business and occupation tax gross receipts from certain sales of natural gas for use in in-state chemical manufacturing; providing business and occupation tax transition rule for persons who employ certain accounting methods; defining certain terms relating to limestone and sandstone for purposes of severance tax;

technical changes in severance tax rates; defining the extent of the privilege of severing and producing limestone and sandstone; technical change defining certain terms in telecommunications tax including "gross receipts" and effective date; modifying certain definitions in consumers sales and service tax; defining certain terms in consumers sales and service tax including "directly used or consumed," "contracting," "manufacturing," "transportation," "transmission," "communication" and "production of natural resources"; modifying cross references relating to consumers sales and service tax and use tax exemption certificates; allowing a certain discount for vendors collecting consumers sales and service tax; creating an exemption to prohibition of profit accruing to person as a result of collection of such tax; modifying exemptions from consumers sales and service tax and use tax by limiting exemptions granted to persons engaged in the businesses of contracting, manufacturing, transportation, transmission, communication or production of natural resources to property or services directly used or consumed in various activities and by providing effective date; removing exemption for sales and services rendered for use in the business of selling tangible personal property and effective date; exempting from consumers sales and service tax certain sales to persons subject to business and occupation tax, severance tax, and telecommunications tax; exempting from consumers sales and service tax sales of propane to consumers for poultry house heating purposes and providing method by which seller may apply for refund; exempting from consumers sales and service tax certain sales of tangible personal property paid for with food stamps and effective date; exempting from consumers sales and service tax sales of tickets for certain school-sponsored activities; exempting from consumers sales and service tax sales of electronic data processing services and related software and definitions thereof; providing for method of claiming consumers sales and service tax and use tax exemptions, refunds of tax, and credit against other taxes; providing for delivery of consumers sales and service tax and use tax exemption certificates by

certain persons in lieu of tax; providing for direct pay permits to be issued by the tax commissioner; imposing use tax on taxable services and effective date; limiting use tax exemption provided for use of property and services by certain businesses; changing rate of personal income tax and effective date; updating Internal Revenue Code references; changing definition of West Virginia taxable income; eliminating reference to West Virginia deduction in personal income tax for resident and nonresident individuals; modifying definition of West Virginia adjusted gross income in personal income tax; changing personal income tax modifications increasing and reducing adjusted gross income; eliminating personal income tax deductions of resident and nonresident individuals and effective date; increasing amount of West Virginia personal exemption in personal income tax to two thousand dollars per exemption and effective date; providing additional personal exemption for certain surviving spouses; limiting ability of husband and wife to file separate West Virginia personal income tax returns; modifying deductions in business franchise tax; making technical changes; providing that partnerships must file annual business franchise tax returns for taxable year on the fifteenth day of the fourth month of the next succeeding taxable year; modifying cross references in business franchise tax; allowing certain credit against business franchise tax for businesses subject to the business and occupation tax; modifying certain definitions relating to the corporation net income tax; modifying certain adjustments in determining West Virginia taxable income for corporation net income tax purposes; and modifying the definition of income-producing activity for purposes of the corporation net income tax.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto five new sections, designated sections one, two, three, four and five; that section two, article nine, chapter eleven of said code be amended and reenacted; that article twelve-a of said chapter eleven be amended by

adding thereto a new section, designated section twenty-five; that sections two-d, two-m and twenty-eight, article thirteen of said chapter be amended and reenacted; that said article thirteen of said chapter be further amended by adding thereto a new section, designated section thirty-one; that sections two, three and four, article thirteen-a of said chapter be amended and reenacted; that said article thirteen-a be further amended by adding thereto a new section, designated section twenty-four; that section two, article thirteen-b of said chapter be amended and reenacted; that said article thirteen-b be further amended by adding thereto a new section, designated section eighteen; that sections two, four-b, five, six and nine, article fifteen of said chapter be amended and reenacted; that said article fifteen be further amended by adding thereto four new sections, designated sections five-a, nine-b, nine-c and nine-d; that sections two, three and eighteen, article fifteen-a be amended and reenacted; that said article fifteen-a be further amended by adding thereto three new sections, designated sections three-b, three-c and three-d; that sections four-e, nine, eleven, twelve, thirteen, fourteen, fifteen, sixteen, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, fifty-one and seventy-four, article twenty-one of said chapter be amended and reenacted; that said article twenty-one be further amended by adding thereto two new sections, designated sections four-f and forty-three; that sections three, seven, nine, thirteen and seventeen, article twenty-three of said chapter be amended and reenacted; that said article twenty-three be further amended by adding thereto a new section, designated section twenty-five; that sections three-a, six and seven, article twenty-four of said chapter be amended and reenacted; and that said article twenty-four be further amended by adding thereto a new section, designated section twenty-three, all to read as follows:

Chapter

5A. Department of Finance and Administration.

11. Taxation.

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.

ARTICLE 9. VOLUNTARY GILDING THE DOME CHECK-OFF PROGRAM.

- §5A-9-1. Legislative intent.
- §5A-9-2. Voluntary check-off designation.
- §5A-9-3. Contributions credited to special fund.
- §5A-9-4. Use of funds.
- §5A-9-5. Effective date.

§5A-9-1. Legislative intent.

1 It is in the public interest to preserve and maintain
2 the state capitol building for the use and benefit of the
3 citizens of West Virginia. The intent of this legislation
4 is to provide additional funding for the preservation and
5 maintenance of the state capitol building, to be prim-
6 arily used to refurbish the capitol dome with gold leaf.

7 The financing of this program will be derived from
8 a voluntary check-off and contribution designation on
9 state personal income tax return forms of a portion or
10 all of a taxpayer's refund. The funding provided shall
11 be supplemental to existing revenues.

§5A-9-2. Voluntary check-off designation.

1 (a) Each West Virginia individual income tax return
2 form shall contain a designation as follows:

3 WEST VIRGINIA GILDING THE DOME CHECK-OFF PROGRAM.

4 Check () if you wish to designate \$1, \$5, \$10 or more
5 of your tax refund for this program. If joint return,
6 check () if spouse wishes to designate \$1, \$5, \$10 or
7 more.

8 (b) Each individual taxpayer desiring to contribute to
9 the voluntary gilding the dome program may designate
10 by placing an "X" in the appropriate box on the state
11 income tax return form. His contribution shall be
12 credited to said program.

§5A-9-3. Contributions credited to special fund.

1 The tax department shall determine by the first day
2 of July of each year the total amount designated
3 pursuant to this legislation and shall report such amount
4 to the state treasurer who shall credit such amount to
5 a special department of finance and administration
6 fund.

§5A-9-4. Use of funds.

1 The funds shall be used for the purpose of preserving
2 and maintaining the dome of the capitol by the use of
3 gold leaf in covering the dome. The commissioner of
4 finance and administration shall on the fifteenth day of
5 January each year furnish the Legislature with a report
6 stating the amount of money that has been provided and
7 how such moneys have been expended.

§5A-9-5. Effective date.

1 This article shall apply to all personal income tax
2 returns required to be filed on or after the first day of
3 July, one thousand nine hundred eighty-seven, and
4 before the first day of July, one thousand nine hundred
5 ninety.

CHAPTER 11. TAXATION.**Article**

- 9. Crimes and Penalties.
- 12A. Annual tax on incomes of certain carriers.
- 13. Business and Occupation Tax.
- 13A. Severance Taxes.
- 13B. Telecommunications Tax.
- 15. Consumers Sales Tax.
- 15A. Use Tax.
- 21. Personal Income Tax.
- 23. Business Franchise Tax.
- 24. Corporation Net Income Tax.

ARTICLE 9. CRIMES AND PENALTIES.**§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 and estate taxes imposed
4 by article eleven; (2) the business franchise registration
5 tax imposed by article twelve; (3) the annual tax on
6 incomes of certain carriers imposed by article twelve-
7 a; (4) the business and occupation tax imposed by article
8 thirteen; (5) the gasoline and special fuels excise tax
9 imposed by article fourteen; (6) the motor carrier road
10 tax imposed by article fourteen-a; (7) the consumers
11 sales and service tax imposed by article fifteen; (8) the
12 use tax imposed by article fifteen-a; (9) the cigarette tax
13 imposed by article seventeen; (10) the soft drinks tax
14 imposed by article nineteen; (11) the personal income

15 tax imposed by article twenty-one; and (12) the corpo-
16 ration net income tax imposed by article twenty-four.

17 (b) The provisions of this article shall also apply to the
18 West Virginia tax procedure and administration act in
19 article ten of chapter eleven, and to any other articles
20 of this chapter when such application is expressly
21 provided for by the Legislature.

22 (c) Each and every provision of this article shall apply
23 to the articles of this chapter listed in subsections (a) and
24 (b), with like effect, as if the provisions of this article
25 were applicable only to such tax and were set forth in
26 extenso in such article.

ARTICLE 12A. ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS.

§11-12A-25. Credit for consumers sales and service tax and use tax paid.

1 The tax imposed by this article shall be subject to the
2 credit set forth in section nine-b, article fifteen of this
3 chapter and the credit set forth in section three-b,
4 article fifteen-a of this chapter.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2d. Public service or utility business.

§11-13-2m. Business of generating or producing electric power; exception; rates.

§11-13-28. Effective date; transition rules.

§11-13-31. Credit for consumers sales and service tax and use tax paid.

***§11-13-2d. Public service or utility business.**

1 (a) Upon any person engaging or continuing within
2 this state in any public service or utility business, except
3 railroad, railroad car, express, pipeline, telephone and
4 telegraph companies, water carriers by steamboat or
5 steamship and motor carriers, there is likewise hereby
6 levied and shall be collected taxes on account of the
7 business engaged in equal to gross income of the
8 business multiplied by the respective rates as follows:

9 (1) Street and interurban and electric railways, one
10 and four-tenths percent;

*Clerk's Note: This section was also amended by S. B. 310, which passed prior to this act.

11 (2) Water companies, four and four-tenths percent,
12 except as to income received by municipally owned
13 water plants;

14 (3) Electric light and power companies, four percent
15 on sales and demand charges for domestic purposes and
16 commercial lighting and four percent on sales and
17 demand charges for all other purposes and commercial
18 lighting and four percent on sales and demand charges
19 for all other purposes, except as to income received by
20 municipally owned plants producing or purchasing
21 electricity and distributing same: *Provided*, That
22 electric light and power companies which engage in the
23 supplying of public service but which do not generate
24 or produce electric power shall be taxed on the gross
25 income derived therefrom at the rate of three percent
26 on sales and demand charges for domestic purposes and
27 commercial lighting and three percent on sales and
28 demand charges for all other purposes, except as to
29 income received by municipally owned plants: *Provided*,
30 *however*, That the sale of electric power under this
31 section shall be taxed at the rate of two and forty-six
32 hundredths percent on that portion of the gross proceeds
33 derived from the sale of electric power to a plant
34 location of a customer engaged in a manufacturing
35 activity, if the contract demand at such plant location
36 exceeds two hundred thousand kilowatts per hour per
37 year, or if the usage of such plant location exceeds two
38 hundred thousand kilowatts per hour in a year: *Provided*
39 *further*, That such two and forty-six hundredths percent
40 rate will be reduced to a rate of two and three hundred
41 thirty-seven thousandths percent through occurrence of
42 the contemplated five percent reduction of rates on the
43 first day of July, one thousand nine hundred eighty-five,
44 and with such rate to thereafter, on the first day of July,
45 one thousand nine hundred eighty-seven, become two
46 percent: *And provided further*, That the sale of electric
47 power under this section shall be exempt from the tax
48 imposed by section two if it is separately metered and
49 consumed in an electrolytic process for the manufacture
50 of chlorine in this state, or is separately metered and
51 consumed in the manufacture of ferroalloy in this state,
52 and the rate reduction herein provided to the taxpayer

53 shall be passed on to the manufacturer of the chlorine
54 or ferroalloy. As used in this section, the term "ferroal-
55 loy" means any of various alloys of iron and one or more
56 other elements used as a raw material in the production
57 of steel: *And provided further*, That the term does not
58 include the final production of steel;

59 (4) Natural gas companies, four and twenty-nine
60 hundredths percent on the gross income: *Provided*, That
61 the sale of natural gas under this section shall be exempt
62 from the tax imposed by this section and section two of
63 this article to the extent that the natural gas is
64 separately metered and is gas from which the purchaser
65 derives hydrogen and carbon monoxide for use in the
66 manufacture of chemicals in this state, and the full
67 economic benefit of the exception herein provided to the
68 taxpayer shall be passed on to such purchaser of the
69 natural gas: *Provided, however*, That there shall be no
70 exemption for the sale of any natural gas from which
71 the purchaser derives carbon monoxide or hydrogen for
72 the purpose of resale;

73 (5) Toll bridge companies, four and twenty-nine
74 hundredths percent; and

75 (6) Upon all other public service or utility business,
76 two and eighty-six hundredths percent.

77 (b) The measure of this tax shall not include gross
78 income derived from commerce between this state and
79 other states of the United States or between this state
80 and foreign countries. The measure of the tax under this
81 section shall include only gross income received from the
82 supplying of public service. The gross income of the
83 taxpayer from any other activity shall be included in the
84 measure of the tax imposed upon such other activity by
85 the appropriate section or sections of this article.

**§11-13-2m. Business of generating or producing electric
power; exception; rates.**

1 (1) Upon every person engaging or continuing within
2 this state in the business of generating or producing
3 electric power for sale, profit or commercial use, either
4 directly or through the activity of others, in whole or in

5 part, when the sale thereof is not subject to tax under
6 section two-d of this article, the amount of the tax to be
7 equal to the value of the electric power, as shown by the
8 gross proceeds derived from the sale thereof by the
9 generator or producer of the same multiplied by a rate
10 of four percent, except that the rate shall be two and
11 forty-six hundredths percent on that portion of the gross
12 proceeds derived from the sale of electric power to a
13 plant location of a customer engaged in a manufacturing
14 activity, if the contract demand at such plant location
15 exceeds two hundred thousand kilowatts per hour per
16 year, or if the usage at such plant location exceeds two
17 hundred thousand kilowatts per hour in a year:
18 *Provided*, That such two and forty-six hundredths
19 percent rate will be reduced to a rate of two and three
20 hundred thirty-seven thousandths percent through
21 occurrence of the contemplated five percent reduction of
22 rates on the first day of July, one thousand nine hundred
23 eighty-five, and with such rate to thereafter, on the first
24 day of July, one thousand nine hundred eighty-seven,
25 become two percent.

26 (2) The measure of this tax shall be the value of all
27 electric power generated or produced in this state for
28 sale, profit or commercial use, regardless of the place
29 of sale or the fact that transmission may be to points
30 outside this state: *Provided*, That the gross income
31 received by municipally owned plants generating or
32 producing electricity shall not be subject to tax under
33 this article.

§11-13-28. Effective date; transition rules.

1 (a) The provisions of sections two-a, two-b, two-c, two-
2 e, two-g, two-h, two-i, two-j, two-k and two-l of this
3 article are inoperative as of the first day of July, one
4 thousand nine hundred eighty-seven. Persons who are
5 fiscal year taxpayers having a fiscal year ending on the
6 thirtieth day of June, one thousand nine hundred eighty-
7 seven, shall file their annual return for fiscal year one
8 thousand nine hundred eighty-seven, on or before the
9 thirty-first day of July, one thousand nine hundred
10 eighty-seven, and remit the amount of any taxes shown
11 thereon to be due.

12 (b) Persons who are calendar year taxpayers and who
13 are not subject to the tax imposed by this article for
14 months beginning on or after the first day of July, one
15 thousand nine hundred eighty-seven, and persons who
16 are fiscal year taxpayers having a fiscal year ending on
17 any date other than the thirtieth day of June, one
18 thousand nine hundred eighty-seven, and who are not
19 subject to the tax imposed by this article for months
20 beginning on or after the first day of July, one thousand
21 nine hundred eighty-seven, shall file their annual
22 returns on or before the thirty-first day of July, one
23 thousand nine hundred eighty-seven, for the short
24 taxable year which ended the thirtieth day of June, one
25 thousand nine hundred eighty-seven, and remit the
26 amount of any taxes shown thereon to be due. Persons
27 required to file an annual return for a short taxable year
28 may claim a portion of the annual exemption allowed
29 under section three of this article, determined in
30 accordance with the amount of the exemption allowable
31 for each month in the short taxable year. The five
32 thousand dollar annual exemption allowed to producers
33 of natural gas shall similarly be calculated and allowed
34 on a monthly basis at the rate of four hundred sixteen
35 dollars and sixty-six cents for each month of the short
36 taxable year ending on the thirtieth day of June, one
37 thousand nine hundred eighty-seven.

38 (c) Persons engaged in activities taxable under
39 sections two-a, two-b, two-c, two-e, two-g, two-h, two-i,
40 two-j, two-k and two-l of this article prior to the first
41 day of July, one thousand nine hundred eighty-seven, are
42 taxable under either article thirteen-a or twenty-three
43 of this chapter, or both, on and after such date.

44 (d) Persons who keep their records using the accrual
45 method of accounting shall file their annual return for
46 the full or short taxable year ending the thirtieth day
47 of June, one thousand nine hundred eighty-seven,
48 computing their tax liability under such method. A
49 taxpayer shall file an amended return for such year and
50 pay any additional taxes due within thirty days after
51 determining that gross income, gross proceeds of sale or

52 gross value were under reported on such annual return,
53 or that any allowable deductions were over reported.

54 (e) Persons who keep their records using the cash
55 method of accounting may file their annual return for
56 the full or short taxable year ending the thirtieth day
57 of June, one thousand nine hundred eighty-seven,
58 computing their tax liability under such method:
59 *Provided*, That such a taxpayer shall file a supplemental
60 return for such year within one month after the close
61 of each quarter during which he received gross income
62 or gross proceeds of sale for any activity or portion
63 thereof completed prior to the first day of July, one
64 thousand nine hundred eighty-seven, and pay any
65 additional taxes shown on the supplemental return to be
66 due. The purpose of this requirement is to minimize the
67 advantage or disadvantage associated with the different
68 methods of accounting when the business and occupation
69 tax no longer applies to the taxpayer's ongoing business
70 activity.

71 (f) Tax liabilities, if any arising for taxable years
72 ending prior to the first day of July, one thousand nine
73 hundred eighty-seven, shall be determined, adminis-
74 tered, assessed and collected as if sections two-a, two-
75 b, two-c, two-e, two-g, two-h, two-i, two-j, two-k and two-
76 l of this article had not been effectively repealed; and
77 the rights and duties of the taxpayer and the state of
78 West Virginia shall be fully and completely preserved.

79 (g) Persons who keep their records using a method of
80 accounting other than the accrual method or cash
81 method shall file their returns in accordance with
82 regulations and instructions promulgated by the tax
83 commissioner.

**§11-13-31. Credit for consumers sales and service tax and
use tax paid.**

1 The tax imposed by this article shall be subject to the
2 credit set forth in section nine-b, article fifteen of this
3 chapter and the credit set forth in section three-b,
4 article fifteen-a of this chapter.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-2. Definitsns.

§11-13A-3. Imposition of privilege tax; phase-in of modified rates and effective dates therefor.

§11-13A-4. Treatment processes as production.

§11-13A-24. Credit for consumers sales and service tax and use tax paid.

§11-13A-2. Definitions.

1 (a) *General.* — When used in this article, or in the
2 administration of this article, the terms defined in
3 subsection (b) shall have the meanings ascribed to them
4 by this section, unless a different meaning is clearly
5 required by either the context in which the term is used,
6 or by specific definition.

7 (b) *Terms defined.*

8 (1) "Coal" means and includes any material composed
9 predominantly of hydrocarbons in a solid state.

10 (2) "Delegate" in the phrase "or his delegate," when
11 used in reference to the tax commissioner, means any
12 officer or employee of the state tax department duly
13 authorized by the tax commissioner directly, or indi-
14 rectly by one or more redelegations of authority, to
15 perform the function mentioned or described in this
16 article or regulations promulgated thereunder.

17 (3) "Economic interest" for the purpose of this article
18 is synonymous with the economic interest ownership
19 required by section 611 of the Internal Revenue Code in
20 effect on the thirty-first day of December, one thousand
21 nine hundred eighty-five, entitling the taxpayer to a
22 depletion deduction for income tax purposes: *Provided,*
23 That a person who only receives an arm's length royalty
24 shall not be considered as having an economic interest.

25 (4) "Extraction of ores or minerals from the ground"
26 includes extraction by mine owners or operators of ores
27 or minerals from the waste or residue of prior mining.

28 (5) "Fiduciary" means and includes, a guardian,
29 trustee, executor, administrator, receiver, conservator
30 or any person acting in any fiduciary capacity for any
31 person.

32 (6) "Gross value" in the case of natural resources
33 means the market value of the natural resource product,

34 in the immediate vicinity, where severed, determined
35 after application of post production processing generally
36 applied by the industry to obtain commercially market-
37 able or usable natural resource products. For all natural
38 resources, "gross value" is to be reported as follows:

39 (A) For natural resources severed or processed (or
40 both severed and processed) and sold during a reporting
41 period, gross value is the amount received or receivable
42 by the taxpayer.

43 (B) In a transaction involving related parties, gross
44 value shall not be less than the fair market value for
45 natural resources of similar grade and quality.

46 (C) In the absence of a sale, gross value shall be the
47 fair market value for natural resources of similar grade
48 and quality.

49 (D) If severed natural resources are purchased for the
50 purpose of processing and resale, the gross value is the
51 amount received or receivable during the reporting
52 period reduced by the amount paid or payable to the
53 taxpayer actually severing the natural resource. If
54 natural resources are severed outside the state of West
55 Virginia and brought into the state of West Virginia by
56 the taxpayer for the purpose of processing and resale,
57 the gross value is the amount received or receivable
58 during the reporting period reduced by the fair market
59 value of the natural resources of similar grade and
60 quality and in the same condition immediately preced-
61 ing the processing of the natural resources in this state.

62 (E) If severed natural resources are purchased for the
63 purpose of processing and consumption, the gross value
64 is the fair market value of processed natural resources
65 of similar grade and quality reduced by the amount paid
66 or payable to the taxpayer actually severing the natural
67 resource. If severed natural resources are severed
68 outside the state of West Virginia and brought into the
69 state of West Virginia by the taxpayer for the purpose
70 of processing and consumption, the gross value is the
71 fair market value of processing natural resources of
72 similar grade and quality reduced by the fair market
73 value of the natural resources of similar grade and

74 quality and in the same condition immediately preced-
75 ing the processing of the natural resources.

76 (F) In all instances, the gross value shall not be
77 reduced by any state or federal taxes, royalties, sales
78 commissions or any other expense.

79 (G) For natural gas, gross value is the value of the
80 natural gas at the wellhead immediately preceding
81 transportation and transmission.

82 (H) For limestone or sandstone quarried or mined,
83 gross value is the value of such stone immediately upon
84 severance from the earth.

85 (7) "Mining" includes not merely the extraction of
86 ores or minerals from the ground but also those
87 treatment processes considered as mining under this
88 article, and those treatment processes necessary or
89 incidental thereto.

90 (8) "Natural resource" means all forms of minerals
91 including, but not limited to, rock, stone, limestone, coal,
92 shale, gravel, sand, clay, natural gas, oil and natural gas
93 liquids which are contained in or on the soils or waters
94 of this state, and includes standing timber.

95 (9) "Partnership" includes a syndicate, group, pool,
96 joint venture, or other unincorporated organization,
97 through or by means of which natural resources are
98 severed, extracted, reduced to possession and produced
99 or prepared in this state for sale, profit or commercial
100 use. "Partner" includes a member of such a syndicate,
101 group, pool, joint venture or organization.

102 (10) "Person" or "company" are herein used interchan-
103 geably and include any individual, firm, partnership,
104 mining partnership, joint venture, association, corpora-
105 tion, trust or any other group or combination acting as
106 a unit, and the plural as well as the singular number,
107 unless the intention to give a more limited meaning is
108 declared by the context.

109 (11) "Processed" or "processing" as applied to:

110 (A) Oil and natural gas shall not include any conver-
111 sion or refining process; and

112 (B) Limestone or sandstone quarried or mined shall
113 not include any treatment process or transportation
114 after the limestone or sandstone is severed from the
115 earth.

116 (12) "Related parties" means two or more persons,
117 organizations or businesses owned or controlled directly
118 or indirectly by the same interests. Control exists if a
119 contract or lease, either written or oral, is entered into
120 whereby one party mines or processes natural resources
121 owned or held by another party and the owner or lessor
122 participates in the severing, processing or marketing of
123 the natural resources or receives any value other than
124 an arm's length passive royalty interest. In the case of
125 related parties, the tax commissioner may apportion or
126 allocate the receipts between or among such persons,
127 organizations or businesses if he determines that such
128 apportionment or allocation is necessary to more clearly
129 reflect gross value.

130 (13) "Sale" includes any transfer of the ownership or
131 title to property, whether for money or in exchange for
132 other property or services, or any combination thereof.

133 (14) "Severing" or "severed" means the physical
134 removal of the natural resources from the earth or
135 waters of this state by any means: *Provided*, That
136 "severing" or "severed" shall not include the removal of
137 natural gas from underground storage facilities into
138 which the natural gas has been mechanically injected
139 following its initial removal from the earth: *Provided*,
140 *however*, That "severing" or "severed" oil and natural
141 gas shall not include any separation process of oil or
142 natural gas commonly employed to obtain marketable
143 natural resource products.

144 (15) "Stock" includes shares in an association, joint-
145 stock company or corporation.

146 (16) "Tax commissioner" means the tax commissioner
147 of the state of West Virginia, or his delegate.

148 (17) "Taxable year" means the calendar year, or the
149 fiscal year ending during such calendar year, upon the
150 basis of which tax liability is computed under this

151 article. "Taxable year" means, in case of a return made
152 for a fractional part of a year under the provisions of
153 this article, or under regulations promulgated by the tax
154 commissioner, the period for which such return is made.

155 (18) "Taxpayer" means and includes any individual,
156 partnership, joint venture, association, corporation,
157 receiver, trustee, guardian, executor, administrator,
158 fiduciary or representative of any kind engaged in the
159 business of severing or processing (or both severing and
160 processing) natural resources in this state for sale or use.
161 In instances where contracts (either oral or written) are
162 entered into whereby persons, organizations or busi-
163 nesses are engaged in the business of severing or
164 processing (or both severing and processing) a natural
165 resource but do not obtain title to or do not have an
166 economic interest therein, the party who owns the
167 natural resource or has an economic interest therein is
168 the taxpayer.

169 (19) "This code" means the code of West Virginia, one
170 thousand nine hundred thirty-one, as amended.

171 (20) "This state" means the state of West Virginia.

**§11-13A-3. Imposition of privilege tax; phase-in of
modified rates and effective dates
therefor.**

1 (a) Upon every person exercising the privilege of
2 engaging or continuing within this state in severing,
3 extracting, reducing to possession and producing for
4 sale, profit or commercial use any natural resource
5 product or products there is hereby imposed a tax in the
6 amount to be determined by the application of rates
7 against the gross value of the articles produced, as
8 shown by the gross proceeds derived from the sale
9 thereof by the producer, except as otherwise provided,
10 multiplied by the rates, in the classifications and
11 according to the effective dates in subsection (b) of this
12 section.

13 (b) *Tax rates; classifications; effective dates.* —
14 Beginning on and after the first day of July, one
15 thousand nine hundred eighty-seven, and for each first

16 day of July thereafter, as specified below, the rates of
17 tax on each respective classification and for each
18 respective year are as follows:

19 (1) On coal, and including the thirty-five one hun-
20 dredths (.35) of one percent additional severance tax on
21 such coal for the benefit of counties and municipalities,
22 as provided in section six of this article, on

23 July 1, 1987 — three and eighty-five one hundredths
24 (3.85) percent;

25 July 1, 1988 — three and eighty-eight one hundredths
26 (3.88) percent;

27 July 1, 1989 — three and ninety-one one hundredths
28 (3.91) percent;

29 July 1, 1990 — three and ninety-four one hundredths
30 (3.94) percent;

31 July 1, 1991 — three and ninety-seven one hundredths
32 (3.97) percent; and

33 July 1, 1992 — and thereafter — four (4.0) percent.

34 (2) On limestone or sandstone quarried or mined, on

35 July 1, 1987 — two and two-tenths (2.2) percent;

36 July 1, 1988 — two and fifty-six one hundredths (2.56)
37 percent;

38 July 1, 1989 — two and ninety-two one hundredths
39 (2.92) percent;

40 July 1, 1990 — three and twenty-eight one hundredths
41 (3.28) percent;

42 July 1, 1991 — three and sixty-four one hundredths
43 (3.64) percent; and

44 July 1, 1992 — and thereafter — four (4.0) percent.

45 (3) On oil, on

46 July 1, 1987 — four and thirty-four one hundredths
47 (4.34) percent;

48 July 1, 1988 — four and two hundred seventy-two one
49 thousandths (4.272) percent;

50 July 1, 1989 — four and two hundred four one
51 thousandths (4.204) percent;

52 July 1, 1990 — four and one hundred thirty-six one
53 thousandths (4.136) percent;

54 July 1, 1991 — four and sixty-eight one thousandths
55 (4.068) percent; and

56 July 1, 1992 — and thereafter — four (4.0) percent.

57 (4)(a) On natural gas, on

58 July 1, 1987 — six and five-tenths (6.5) percent;

59 July 1, 1988 — six (6.0) percent;

60 July 1, 1989 — five and five tenths (5.5) percent;

61 July 1, 1990 — five (5.0) percent;

62 July 1, 1991 — four and five-tenths (4.5) percent; and

63 July 1, 1992 — and thereafter — four (4.0) percent.

64 (4)(b) On natural gas produced from new wells drilled
65 and placed in service on and after July 1, 1987 — four
66 (4.0) percent.

67 (5) On sand, gravel or other mineral product not
68 quarried or mined, on

69 July 1, 1987 — four and thirty-four one hundredths
70 (4.34) percent;

71 July 1, 1988 — four and two hundred seventy-two one
72 thousandths (4.272) percent;

73 July 1, 1989 — four and two hundred four one
74 thousandths (4.204) percent;

75 July 1, 1990 — four and one hundred thirty-six one
76 thousandths (4.136) percent;

77 July 1, 1991 — four and sixty-eight one thousandths
78 (4.068) percent; and

79 July 1, 1992 — and thereafter — four (4.0) percent.

80 (6) On timber, on and after July 1, 1987 — two and
81 five-tenths (2.5) percent.

- 82 (7) On other natural resources, on
83 July 1, 1987 — two and eighty-six one hundredths
84 (2.86) percent;
- 85 July 1, 1988 — three and eighty-eight one thousandths
86 (3.088) percent;
- 87 July 1, 1989 — three and three hundred sixteen one
88 thousandths (3.316) percent;
- 89 July 1, 1990 — three and five hundred forty-four one
90 thousandths (3.544) percent;
- 91 July 1, 1991 — three and seven hundred seventy-two
92 one thousandths (3.772) percent; and
- 93 January 1, 1992 — and thereafter — four (4.0)
94 percent.

95 (c) *Tax in addition to other taxes.* — The taxes
96 imposed by this article shall apply to all persons
97 severing or processing (or both severing and processing)
98 natural resources in this state and shall be in addition
99 to all other taxes imposed by law.

100 (d) *Statement of purpose; relationship to existing*
101 *contracts.* — It is the intent of the Legislature in
102 enacting this article thirteen-a to continue the imposi-
103 tion of the tax upon exercising the privilege of engaging
104 or continuing within this state the business of severing,
105 extracting, reducing to possession and producing for
106 sale, profit or commercial use, natural resource pro-
107 ducts, which was imposed by section two-a, article
108 thirteen of this chapter prior to the first day of July, one
109 thousand nine hundred eighty-seven, by such act. The
110 provisions of any contract entered into prior to the
111 effective date of this act and relating to the allocation,
112 reimbursement, payment or assessment of the tax
113 imposed by section two-a, article thirteen of this
114 chapter, formerly, shall apply with full force and effect
115 to the tax imposed by this article; it being the intent of
116 the Legislature that, for purposes of any such contrac-
117 tual provision, the tax imposed by this article shall be
118 considered the same as the tax imposed by section two-

119 a, article thirteen of this chapter prior to the first day
120 of July, one thousand nine hundred eighty-seven.

§11-13A-4. Treatment processes as production.

1 (a) *Treatment processes considered as mining.* — The
2 following treatment processes (and the treatment
3 processes necessary or incidental thereto) when applied
4 by the mine owner or operator to natural resources
5 mined in this state shall be considered as mining and
6 part of the privilege taxed under this article.

7 (1) *Coal.* — In the case of coal: Cleaning, breaking,
8 sizing, dust allaying, treating to prevent freezing and
9 loading for shipment.

10 (2) *Minerals customarily sold in crude form.* — In the
11 case of other minerals which are customarily sold in
12 crude form: Sorting, concentrating, sintering and
13 substantially equivalent processes to bring them to
14 shipping grade and form, and loading for shipment.

15 (3) *Minerals not customarily sold in crude form.* — In
16 the case of other minerals which are not customarily
17 sold in the form of the crude mineral products:
18 Crushing, grinding and beneficiation by concentration
19 (gravity, flotation, amalgamation or electrostatic or
20 magnetic), cyanidation, leaching, crystallization, precip-
21 itation (but not including electrolytic deposition,
22 roasting, thermal or electric smelting or refining), or
23 substantially equivalent processes or combinations of
24 processes used in the separation or extraction of the
25 product or products from the ore or the mineral or
26 minerals from other material from the mine or other
27 natural deposit.

28 (4) *Oil shale.* — In the case of oil shale: Extraction
29 from the ground, crushing, loading into the retort and
30 retorting, but not hydrogenation, refining or any other
31 process subsequent to retorting; and

32 (5) *Other.* — Any other treatment process provided for
33 in a legislative rule prescribed by the tax commissioner
34 which, with respect to the particular ore or mineral, is
35 not inconsistent with the preceding subdivisions of this
36 subsection (a).

37 (b) *Treatment processes not considered as mining.* —
38 Unless such processes are otherwise provided for in
39 subsection (a), or are necessary or incidental to processes
40 provided for in subsection (a), the following treatment
41 processes shall not be considered as “mining”:
42 Electrolytic deposition, roasting, calcining, thermal or
43 electric smelting, refining, polishing, fine pulverization,
44 blending with other materials, treatment effecting a
45 chemical change, thermal action and molding or
46 shaping.

47 (c) *Treatment processes considered part of production*
48 *of oil, natural gas and natural gas liquids.* — The
49 privileges of severing and producing oil and natural gas
50 shall not include any conversion or refining process.

51 (d) *Timber production privilege.* — The privilege of
52 severing and producing timber shall end once the tree
53 is severed and delimbed.

54 (e) *Limestone and sandstone quarried or mined*
55 *production privilege.* — The privilege of severing and
56 producing limestone and sandstone by quarrying or
57 mining shall end once the limestone or sandstone is
58 severed from the earth.

**§11-13A-24. Credit for consumers sales and service tax
and use tax paid.**

1 The tax imposed by this article shall be subject to the
2 credit set forth in section nine-b, article fifteen of this
3 chapter and the credit set forth in section three-b,
4 article fifteen-a of this chapter.

ARTICLE 13B. TELECOMMUNICATIONS TAX.

§11-13B-2. Definitions.

§11-13B-18. Credit for consumers sales and service tax and use tax paid.

§11-13B-2. Definitions.

1 (a) *General.* — When used in this article, or in the
2 administration of this article, the terms defined in
3 subsection (b) shall have the meanings ascribed to them
4 by this section, unless a different meaning is clearly
5 required by either the context in which the term is used,
6 or by specific definition.

7 (b) *Terms defined.*

8 (1) *Business.* — The term “business” shall include all
9 activities engaged in or caused to be engaged in with
10 the object of gain or economic benefit, either direct or
11 indirect.

12 (2) *Communications channel.* — The term “communi-
13 cations channel” or “channel” means the smallest
14 discrete circuit or other means whereby a message,
15 conversation, data set or signal may be communicated,
16 which cannot be subdivided without destroying or
17 diminishing its capacity to carry such communications.

18 (3) *Communications pathway.* — The term “communi-
19 cations pathway” means any conduit, wire, cable,
20 microwave signal path, radio signal path or other
21 pathway over which telecommunications can be carried.
22 The length of the communications pathway of satellite
23 repeater facilities or other satellite communications
24 facilities is deemed to be the shortest distance over the
25 surface of the earth between the point on the earth from
26 which signals are sent to the satellite and the point on
27 the earth where such signals are received from the
28 satellite.

29 (4) *Delegate.* — The term “delegate” in the phrase “or
30 his delegate,” when used in reference to the tax
31 commissioner, means any officer or employee of the
32 state tax department duly authorized by the tax
33 commissioner directly, or indirectly by one or more
34 redelegations of authority, to perform the function
35 mentioned or described in this article or regulations
36 promulgated thereunder.

37 (5) *Gross income.* — The term “gross income” of a
38 telephone company or communications carrier shall be
39 defined as all gross income received from the provision
40 of local exchange or long distance voice or data
41 communications services but shall not include gross
42 income from the provision of network access, billing or
43 similar services provided to end users, other telephone
44 companies, or communications carriers: *Provided,* That
45 on and after the first day of July, one thousand nine
46 hundred eighty-eight, the term “gross income” of a

47 telephone company or communications carrier shall not
48 include gross income from the provision of commodities
49 or services which shall be determined by the public
50 service commission of West Virginia to be subject to
51 competition. On or before the thirty-first day of
52 December of each calendar year, the public service
53 commission of West Virginia shall submit to the tax
54 commissioner a listing of those commodities or services
55 which it has determined to be subject to competition.
56 Such listing shall constitute a conclusive determination
57 for the purposes of defining "gross income" within the
58 meaning of this subsection.

59 (6) *Person*. — The term "person" or "company" are
60 herein used interchangeably and include any individual,
61 firm, partnership, mining partnership, joint venture,
62 association, corporation, trust or any other group or
63 combination acting as a unit, and the plural as well as
64 the singular number, unless the intention to give a more
65 limited meaning is declared by the context.

66 (7) *Sale*. — The term "sale" includes any transfer of
67 the ownership or title to property or any provision of a
68 service, whether for money or in exchange for other
69 property or services, or a combination thereof.

70 (8) *Tax commissioner*. — The term "tax commis-
71 sioner" means the tax commissioner of the state of West
72 Virginia, or his delegate.

73 (9) *Taxable year*. — The term "taxable year" means
74 the calendar year, or the fiscal year ending during such
75 calendar year, upon the basis of which tax liability is
76 computed under this article. "Taxable year" means, in
77 case of a return made for a fractional part of a year
78 under the provisions of the article, or under regulations
79 promulgated by the tax commissioner, the period for
80 which such return is made.

81 (10) *Taxpayer*. — The term "taxpayer" means and
82 includes any individual, partnership, joint venture,
83 association, corporation, receiver, trustee, guardian,
84 executor, administrator, fiduciary or representative of
85 any kind engaged in telecommunications business
86 activity.

87 (11) *Telecommunications*. — The term “telecommuni-
 88 cations” means all telephone, radio, light, light wave,
 89 radio telephone, telegraph and other communication, or
 90 means of communication, whether used for voice
 91 communication, computer data transmission, or other
 92 encoded symbolic information transfers. The term shall
 93 not include commercial broadcast radio or television,
 94 cable television or amateur or citizen’s band radio.

§11-13B-18. Credit for consumers sales and service tax and use tax paid.

1 The tax imposed by this article shall be subject to the
 2 credit set forth in section nine-b, article fifteen of this
 3 chapter and the credit set forth in section three-b,
 4 article fifteen-a of this chapter.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-2. Definitions.

§11-15-4b. Liability of purchaser; assessment and collection.

§11-15-5. Remittance of tax; discount.

§11-15-5a. Discount for expense in collection and remittance.

§11-15-6. Vendor must show sale or service exempt; presumption.

§11-15-9. Exemptions.

§11-15-9b. Method for claiming exemptions; refunds of tax, credit against other taxes.

§11-15-9c. Delivery of a certificate of exemption in lieu of tax.

§11-15-9d. Direct pay permits.

***§11-15-2. Definitions.**

1 For the purpose of this article:

2 (a) “Persons” shall mean any individual, partnership,
 3 association, corporation, municipal corporation,
 4 guardian, trustee, committee, executor or administrator;

5 (b) “Tax commissioner” shall mean the state tax
 6 commissioner;

7 (c) “Gross proceeds” shall mean the amount received
 8 in money, credits, property or other consideration from
 9 sales and services within this state, without deduction
 10 on account of the cost of property sold, amounts paid for
 11 interest or discounts or other expenses whatsoever.
 12 Losses shall not be deducted, but any credit or refund
 13 made for goods returned may be deducted;

*Clerk’s Note: This section was also amended by S. B. 760, which passed subsequent to this act.

14 (d) "Sale," "sales" or "selling" shall include any
15 transfer of the possession or ownership of tangible
16 personal property for a consideration, including a lease
17 or rental, when the transfer or delivery is made in the
18 ordinary course of the transferor's business and is made
19 to the transferee or his agent for consumption or use or
20 any other purpose;

21 (e) "Vendor" shall mean any person engaged in this
22 state in furnishing services taxed by this article or
23 making sales of tangible personal property;

24 (f) "Ultimate consumer" or "consumer" shall mean a
25 person who uses or consumes services or personal
26 property;

27 (g) "Business" shall include all activities engaged in
28 or caused to be engaged in with the object of gain or
29 economic benefit, direct or indirect, and all activities of
30 the state and its political subdivisions which involve
31 sales of tangible personal property or the rendering of
32 services when those service activities compete with or
33 may compete with the activities of other persons;

34 (h) "Tax" shall include all taxes, interest and penalties
35 levied hereunder;

36 (i) "Service" or "selected service" shall include all
37 nonprofessional activities engaged in for other persons
38 for a consideration, which involve the rendering of a
39 service as distinguished from the sale of tangible
40 personal property, but shall not include contracting,
41 personal services or the services rendered by an
42 employee to his employer or any service rendered for
43 resale;

44 (j) "Purchaser" shall mean a person who purchases
45 tangible personal property or a service taxed by this
46 article;

47 (k) "Personal service" shall include those:

48 (1) Compensated by the payment of wages in the
49 ordinary course of employment;

50 (2) Rendered to the person of an individual without,
51 at the same time, selling tangible personal property,

52 such as nursing, barbering, shoe shining, manicuring
53 and similar services;

54 (l) "Taxpayer" shall mean any person liable for the
55 tax imposed by this article;

56 (m) "Drugs" shall include all sales of drugs or
57 appliances to a purchaser, upon prescription of a
58 physician or dentist and any other professional person
59 licensed to prescribe;

60 (n) (1) "Directly used or consumed" in the activities of
61 contracting, manufacturing, transportation, transmis-
62 sion, communication or the production of natural
63 resources shall mean used or consumed in those
64 activities or operations which constitute an integral and
65 essential part of such activities, as contrasted with and
66 distinguished from those activities or operations which
67 are simply incidental, convenient or remote to such
68 activities.

69 (2) Uses of property or consumption of services which
70 constitute direct use or consumption in the activities of
71 contracting, manufacturing, transportation, transmis-
72 sion, communication or the production of natural
73 resources shall include only:

74 (A) In the case of tangible personal property, physical
75 incorporation of property into a finished product
76 resulting from manufacturing production or the produc-
77 tion of natural resources or resulting from contracting
78 activity;

79 (B) Causing a direct physical, chemical or other
80 change upon property undergoing manufacturing
81 production or production of natural resources or which
82 is the subject of contracting activity;

83 (C) Transporting or storing property undergoing
84 transportation, communication, transmission, manufac-
85 turing production, or production of natural resources or
86 which is the subject of contracting activity;

87 (D) Measuring or verifying a change in property
88 directly used in transportation, communication, trans-

89 mission, manufacturing production or production of
90 natural resources or contracting activity;

91 (E) Physically controlling or directing the physical
92 movement or operation of property directly used in
93 transportation, communication, transmission, manufac-
94 turing production or production of natural resources or
95 contracting activity;

96 (F) Directly and physically recording the flow of
97 property undergoing transportation, communication,
98 transmission, manufacturing production or production
99 of natural resources or which is the subject of contract-
100 ing activity;

101 (G) Producing energy for property directly used in
102 transportation, communication, transmission, manufac-
103 turing production or production of natural resources or
104 contracting activity;

105 (H) Facilitating the transmission of gas, water, steam
106 or electricity from the point of their diversion to
107 property directly used in transportation, communica-
108 tion, transmission, manufacturing production or produc-
109 tion of natural resources or contracting activity;

110 (I) Controlling or otherwise regulating atmospheric
111 conditions required for transportation, communication,
112 transmission, manufacturing production or production
113 of natural resources or contracting activity;

114 (J) Serving as an operating supply for property
115 undergoing transmission, manufacturing production or
116 production of natural resources or which is the subject
117 of contracting activity or for property directly used in
118 transportation, communication, transmission, manufac-
119 turing production or production of natural resources or
120 contracting activity;

121 (K) Maintenance or repair of property used in trans-
122 portation, communication, transmission, manufacturing
123 production or production of natural resources or
124 contracting activity;

125 (L) Storage, removal or transportation of economic
126 waste;

127 (M) Pollution control or environmental quality or

128 protection activity and personnel, plant, product or
129 community safety or security activity; or

130 (N) Otherwise be used as an integral and essential
131 part of transportation, communication, transmission,
132 manufacturing production or production of natural
133 resources or contracting activity.

134 (3) Uses of property or services which would not
135 constitute direct use or consumption in the activities of
136 contracting, manufacturing, transportation, transmis-
137 sion, communication or the production of natural
138 resources shall include, but not be limited to:

139 (A) Heating and illumination of office buildings;

140 (B) Janitorial or general cleaning activities;

141 (C) Personal comfort of personnel;

142 (D) Production planning, scheduling of work, or
143 inventory control;

144 (E) Marketing, general management, supervision,
145 finance, training, accounting and administration; or

146 (F) An activity or function incidental or convenient to
147 transportation, communication, transmission, manufac-
148 turing production or production of natural resources or
149 contracting activity, rather than an integral and
150 essential part of such activities;

151 (o) "Contracting" shall mean the furnishing of work,
152 or both materials and work, in fulfillment of a contract
153 for the construction, alteration, repair, decoration or
154 improvement of a new or existing building or structure,
155 or any part thereof, or for removal or demolition of a
156 building or structure, or any part thereof, or for the
157 alteration, improvement or development of real prop-
158 erty. For purposes of this definition, the term "struc-
159 ture" shall include, but not be limited to, everything
160 built up or composed of parts joined together in some
161 definite manner and attached to real property, or which
162 adds utility to a particular parcel of property and is
163 intended to remain there for an indefinite period of
164 time;

165 (p) "Manufacturing" shall mean a systematic opera-
166 tion or integrated series of systematic operations
167 engaged in as a business or segment of a business which
168 transforms or converts tangible personal property by
169 physical, chemical or other means into a different form,
170 composition or character from that in which it originally
171 existed;

172 (q) "Transportation" shall mean the act or process of
173 conveying, as a commercial enterprise, passengers or
174 goods from one place or geographical location to another
175 place or geographical location;

176 (r) "Transmission" shall mean the act or process of
177 causing natural gas to pass or be conveyed from one
178 place or geographical location to another place or
179 geographical location through a pipeline or other
180 medium for commercial purposes;

181 (s) "Communication" shall mean all telephone, radio,
182 light, light wave, radio telephone, telegraph and other
183 communication or means of communication, whether
184 used for voice communication, computer data transmis-
185 sion or other encoded symbolic information transfers
186 and shall include commercial broadcast radio, commer-
187 cial broadcast television and cable television;

188 (t) "Production of natural resources" shall mean the
189 performance, by either the owner of the natural
190 resources or another, of the act or process of exploring,
191 developing, severing, extracting, reducing to possession
192 and loading for shipment for sale, profit or commercial
193 use of any natural resource products and any reclama-
194 tion, waste disposal or environmental activities asso-
195 ciated therewith.

§11-15-4b. Liability of purchaser; assessment and collection.

1 If any purchaser refuses to pay to the vendor the tax
2 imposed by section three of this article, or in the case
3 of a sale subject to section nine-c of this article, a
4 purchaser refuses to sign and present to the vendor a
5 proper certificate indicating the sale is not subject to
6 this tax, or signs or presents to the vendor a false

128 protection activity and personnel, plant, product or
129 community safety or security activity; or

130 (N) Otherwise be used as an integral and essential
131 part of transportation, communication, transmission,
132 manufacturing production or production of natural
133 resources or contracting activity.

134 (3) Uses of property or services which would not
135 constitute direct use or consumption in the activities of
136 contracting, manufacturing, transportation, transmis-
137 sion, communication or the production of natural
138 resources shall include, but not be limited to:

139 (A) Heating and illumination of office buildings;

140 (B) Janitorial or general cleaning activities;

141 (C) Personal comfort of personnel;

142 (D) Production planning, scheduling of work, or
143 inventory control;

144 (E) Marketing, general management, supervision,
145 finance, training, accounting and administration; or

146 (F) An activity or function incidental or convenient to
147 transportation, communication, transmission, manufac-
148 turing production or production of natural resources or
149 contracting activity, rather than an integral and
150 essential part of such activities;

151 (o) "Contracting" shall mean the furnishing of work,
152 or both materials and work, in fulfillment of a contract
153 for the construction, alteration, repair, decoration or
154 improvement of a new or existing building or structure,
155 or any part thereof, or for removal or demolition of a
156 building or structure, or any part thereof, or for the
157 alteration, improvement or development of real prop-
158 erty. For purposes of this definition, the term "struc-
159 ture" shall include, but not be limited to, everything
160 built up or composed of parts joined together in some
161 definite manner and attached to real property, or which
162 adds utility to a particular parcel of property and is
163 intended to remain there for an indefinite period of
164 time;

165 (p) "Manufacturing" shall mean a systematic opera-
166 tion or integrated series of systematic operations
167 engaged in as a business or segment of a business which
168 transforms or converts tangible personal property by
169 physical, chemical or other means into a different form,
170 composition or character from that in which it originally
171 existed;

172 (q) "Transportation" shall mean the act or process of
173 conveying, as a commercial enterprise, passengers or
174 goods from one place or geographical location to another
175 place or geographical location;

176 (r) "Transmission" shall mean the act or process of
177 causing natural gas to pass or be conveyed from one
178 place or geographical location to another place or
179 geographical location through a pipeline or other
180 medium for commercial purposes;

181 (s) "Communication" shall mean all telephone, radio,
182 light, light wave, radio telephone, telegraph and other
183 communication or means of communication, whether
184 used for voice communication, computer data transmis-
185 sion or other encoded symbolic information transfers
186 and shall include commercial broadcast radio, commer-
187 cial broadcast television and cable television;

188 (t) "Production of natural resources" shall mean the
189 performance, by either the owner of the natural
190 resources or another, of the act or process of exploring,
191 developing, severing, extracting, reducing to possession
192 and loading for shipment for sale, profit or commercial
193 use of any natural resource products and any reclama-
194 tion, waste disposal or environmental activities asso-
195 ciated therewith.

§11-15-4b. Liability of purchaser; assessment and collection.

1 If any purchaser refuses to pay to the vendor the tax
2 imposed by section three of this article, or in the case
3 of a sale subject to section nine-c of this article, a
4 purchaser refuses to sign and present to the vendor a
5 proper certificate indicating the sale is not subject to
6 this tax, or signs or presents to the vendor a false

7 certificate, or after signing and presenting a proper
8 certificate uses the items purchased in such manner that
9 the sale would be subject to the tax, he shall be
10 personally liable for the amount of tax applicable to the
11 transaction or transactions.

12 In such cases the tax commissioner shall have
13 authority to make an assessment against such pur-
14 chaser, based upon any information within his posses-
15 sion or that may come into his possession. This assess-
16 ment and notice thereof shall be made and given in
17 accordance with sections seven and eight, article ten of
18 this chapter.

19 This section shall not be construed as relieving the
20 vendor from liability for the tax.

§11-15-5. Remittance of tax; discount.

1 No profit shall accrue to any person as a result of the
2 collection of the tax levied by this article notwithstand-
3 ing the total amount of such taxes collected may be in
4 excess of the amount for which such person would be
5 liable by the application of the levy of five percent to
6 the gross proceeds of his sales, and the total of all taxes
7 collected by any such person shall be returned and
8 remitted to the tax commissioner, except that any
9 person collecting and remitting such taxes in a timely
10 manner as provided in section five-a of this article shall
11 be entitled to the appropriate discount against the
12 amount of tax payable by him under this article and
13 such discount shall not be construed as a profit in
14 violation of this section.

§11-15-5a. Discount for expense in collection and remittance.

1 In the event the taxes due and payable under this
2 article are remitted by the vendor to the tax commis-
3 sioner on or before the tenth day of the month next
4 succeeding the month in which the tax accrued, the

¹Clerk's Note: This section (§11-15-5) was also amended by H. B. 3202, which passed subsequent to this act.

²Clerk's Note: This section (§11-15-5a) is new, as set out in this act. The section was subsequently repealed by H. B. 3202, which passed May 12, 1987.

5 vendor who has remitted the tax collected in such
6 manner is entitled to apply and discount against the
7 amount of tax payable by him under this article an
8 amount equal to two percent of the first one thousand
9 dollars of tax collected and an amount equal to one
10 percent of the tax collected over and above the first one
11 thousand dollars of the tax collected.

12 The tax commissioner shall promulgate in accordance
13 with chapter twenty-nine-a of this code such rules as are
14 necessary to carry out the purposes of this section.

**§11-15-6. Vendor must show sale or service exempt;
presumption.**

1 In the case of sales subject to section nine-c of this
2 article, the burden of proving that a sale or service was
3 exempt from the tax shall be upon the vendor, unless
4 he takes from the purchaser an exemption certificate
5 signed by and bearing the address of the purchaser and
6 setting forth the reason for the exemption and substan-
7 tially in the form prescribed by the tax commissioner.
8 To prevent evasion, it shall be presumed that all sales
9 and services are subject to the tax until the contrary is
10 clearly established.

***§11-15-9. Exemptions.**

1 The following sales and services shall be exempt:

2 (a) Sales of gas, steam and water delivered to
3 consumers through mains or pipes, and sales of
4 electricity;

5 (b) Sales of textbooks required to be used in any of
6 the schools of this state;

7 (c) Sales of property or services to the state, its
8 institutions or subdivisions, and to the United States,
9 including agencies of federal, state or local governments
10 for distribution in public welfare or relief work;

11 (d) Sales of motor vehicles which are titled by the
12 department of motor vehicles and which are subject to
13 the tax imposed by section four, article three, chapter
14 seventeen-a of this code;

*Clerk's Note: This section (§11-15-9) was also amended by H. B. 2787, which passed prior to this act, and by S.B. 760, which passed subsequent to it.

15 (e) Sales of property or services to churches and bona
16 fide charitable organizations who make no charge
17 whatsoever for the services they render: *Provided*, That
18 the exemption herein granted shall apply only to
19 services, equipment, supplies and materials directly
20 used or consumed by these organizations, and shall not
21 apply to purchases of gasoline or special fuel;

22 (f) Sales of property or services to corporations or
23 organizations qualified under section 501(c)(3) of the
24 Internal Revenue Code of 1986, as amended, or under
25 section 501(c)(4) of the Internal Revenue Code of 1986,
26 as amended, who make casual and occasional sales not
27 conducted in a repeated manner or in the ordinary
28 course of repetitive and successive transactions of like
29 character: *Provided*, That the exemption herein granted
30 shall apply only to services, equipment, supplies and
31 materials directly used or consumed in the activities for
32 which such organizations qualify as tax exempt organ-
33 ization under the Internal Revenue Code by these
34 organizations and shall not apply to purchases of
35 gasoline or special fuel;

36 (g) Sales of property or services to persons engaged
37 in this state in the business of contracting, manufactur-
38 ing, transportation, transmission, communication or in
39 the production of natural resources: *Provided*, That the
40 exemption herein granted shall apply only to services,
41 machinery, supplies and materials directly used or
42 consumed in the businesses or organizations named
43 above, and shall not apply to purchases of gasoline or
44 special fuel: *Provided, however*, That on and after the
45 first day of July, one thousand nine hundred eighty-
46 seven, the exemption provided in this subsection shall
47 apply only to services, machinery, supplies and mate-
48 rials directly used or consumed in the activities of
49 contracting, manufacturing, transportation, transmis-
50 sion, communication or the production of natural
51 resources in the businesses or organizations named
52 above and shall not apply to purchases of gasoline or
53 special fuel;

54 (h) An isolated transaction in which any tangible
55 personal property is sold, transferred, offered for sale,
56 or delivered by the owner thereof or by his representa-
57 tive for the owner's account, such sale, transfer, offer for
58 sale or delivery not being made in the ordinary course
59 of repeated and successive transactions of like character
60 by such owner or on his account by such representative;

61 (i) Sales of tangible personal property and services
62 rendered for use or consumption in connection with the
63 business of selling tangible personal property or
64 dispensing a service subject to tax under this article or
65 which would be subject to tax under this article but for
66 the exemption for food provided in section eleven of this
67 article and sales of tangible personal property and
68 services rendered for use or consumption in connection
69 with the commercial production of an agricultural
70 product the ultimate sale of which will be subject to the
71 tax imposed by this article or which would have been
72 subject to tax under this article but for the exemption
73 for food provided in section eleven of this article:
74 *Provided*, That sales of tangible personal property and
75 services to be used or consumed in the construction of
76 or permanent improvement to real property and sales
77 of gasoline and special fuel shall not be exempt:
78 *Provided, however*, That materials and services whereby
79 a tax has been paid by a contractor may be deducted
80 when their services and tangible personal property are
81 used or consumed in the construction of or permanent
82 improvements to real property of retailers or commer-
83 cial producers of agricultural products: *Provided*
84 *further*, That on and after the first day of July, one
85 thousand nine hundred eighty-seven, the exemption
86 provided in this subsection shall apply only to sales of
87 tangible personal property or service used or consumed
88 in connection with the commercial production of an
89 agricultural product or the business of dispensing a
90 service subject to the tax under this article or which
91 would be subject to tax under this article but for the
92 exemption for food in section eleven of this article;

93 (j) Sales of tangible personal property for the purpose
94 of resale in the form of tangible personal property:

95 *Provided*, That sales of gasoline and special fuel by
96 distributors and importers shall be taxable except when
97 the sale is to another distributor for resale;

98 (k) Sales of property or services to nationally char-
99 tered fraternal or social organizations for the sole
100 purpose of free distribution in public welfare or relief
101 work: *Provided*, That sales of gasoline and special fuel
102 shall be taxable;

103 (l) Sales and services, fire fighting or station house
104 equipment, including construction and automotive,
105 made to any volunteer fire department organized and
106 incorporated under the laws of the state of West
107 Virginia: *Provided*, That sales of gasoline and special
108 fuel shall be taxable;

109 (m) Sales of newspapers when delivered to consumers
110 by route carriers;

111 (n) Sales of drugs dispensed upon prescription and
112 sales of insulin to consumers for medical purposes;

113 (o) Sales of radio and television broadcasting time,
114 preprinted advertising circulars, and newspaper and
115 outdoor advertising space for the advertisement of goods
116 or services;

117 (p) Sales and services performed by day care centers;

118 (q) Casual and occasional sales of property or services
119 not conducted in a repeated manner or in the ordinary
120 course of repetitive and successive transactions of like
121 character by corporations or organizations qualified
122 under section 501(c)(3) of the Internal Revenue Code of
123 1986, as amended, or under section 501(c)(4) of the
124 Internal Revenue Code of 1986, as amended;

125 (r) Sales of property or services to a school which has
126 approval from the West Virginia board of regents to
127 award degrees, which has its principal campus in this
128 state, and which is exempt from federal and state
129 income taxes under section 501(c)(3) of the Internal
130 Revenue Code of 1986, as amended: *Provided*, That sales
131 of gasoline and special fuel shall be taxable;

132 (s) Sales of mobile homes to be utilized by purchasers

133 as their principal year-round residence and dwelling:
134 *Provided*, That these mobile homes shall be subject to
135 tax at the three percent rate;

136 (t) Sales of lottery tickets and materials by licensed
137 lottery sales agents and lottery retailers authorized by
138 the state lottery commission, under the provisions of
139 article twenty-two, chapter twenty-nine of this code;

140 (u) Leases of motor vehicles titled pursuant to the
141 provisions of article three, chapter seventeen-a of this
142 code to lessees for a period of thirty or more consecutive
143 days. This exemption shall apply to leases executed on
144 or after the first day of July, one thousand nine hundred
145 eighty-seven, and to payments under long-term leases
146 executed before such date, for months thereof beginning
147 on or after such date;

148 (v) Notwithstanding any provisions in this section to
149 the contrary, sales of property and services to persons
150 subject to tax under article thirteen, thirteen-a or
151 thirteen-b of this chapter: *Provided*, That the exemption
152 herein granted shall apply only to property or services
153 used or consumed in activities gross receipts from which
154 are subject to tax under such articles and shall not apply
155 to purchases of gasoline or special fuel;

156 (w) Sales of propane to consumers for poultry house
157 heating purposes, with any seller to such consumer who
158 may have prior paid such tax in his price, to not pass
159 on the same to the consumer, but to make application
160 and receive refund of such tax from the tax commis-
161 sioner, pursuant to rules and regulations which shall be
162 promulgated by the tax commissioner; and notwith-
163 standing the provisions of section eighteen of this article
164 or any other provisions of such article to the contrary;

165 (x) Any sales of tangible personal property or services
166 purchased after the thirtieth day of September, one
167 thousand nine hundred eighty-seven, and lawfully paid
168 for with food stamps pursuant to the federal food stamp
169 program codified in United States Code, 2011, et seq.,
170 as amended;

171 (y) Sales of tickets for activities sponsored by element-
172 ary and secondary schools located within this state; and

173 (z) Sales of electronic data processing services and
174 related software: *Provided*, That for the purposes of this
175 subsection (z) "electronic data processing services"
176 means (1) the processing of another's data, including all
177 processes incident to processing of data such as key-
178 punching, keystroke verification, rearranging, or
179 sorting of previously documented data for the purpose
180 of data entry or automatic processing, and changing the
181 medium on which data is sorted, whether these pro-
182 cesses are done by the same person or several persons;
183 and (2) providing access to computer equipment for the
184 purpose of processing data or examining or acquiring
185 data stored in or accessible to such computer equipment.

***§11-15-9b. Method for claiming exemptions, refunds of
tax, credit against other taxes.**

1 (a) Any person having a right or claim to any
2 exemption set forth in section nine of this article except
3 those exemptions set forth in subsections (a), (b), (c), (d),
4 (h), (j), (m), (n), (p), (r), (s), (t), (u), (x) and (y) of said
5 section nine or the exemption of sales of property or
6 services to churches under subsection (e) of said section
7 nine shall pay to the vendor the tax imposed by this
8 article and may exercise or assert such exemption only
9 in accordance with subsection (b) or subsection (c) of this
10 section.

11 (b) Any person who has paid the tax imposed by this
12 article and who may lawfully claim exemption from the
13 tax under a subsection of section nine of this article not
14 enumerated in subsection (a) of this section may exercise
15 or assert such claim by filing a claim for refund of
16 consumers sales and service tax overpayments on such
17 form and in such manner as the tax commissioner may
18 require and in accordance with the requirements of this
19 section. The tax commissioner shall cause a refund to
20 be made within thirty days of receipt of a lawful and
21 accurate claim.

22 (c) In lieu of filing a claim for refund of consumers
23 sales and service tax overpayments, the taxpayer may,

* Clerk's Note: This section was also amended by S. B. 760, which passed subsequent to this act.

22 (c) In lieu of filing a claim for refund of consumers
23 sales and service tax overpayments, the taxpayer may,
24 at his option, file a claim for credit on such form and
25 in such manner as the tax commissioner may require
26 and credit the amount of consumers sales and service
27 tax overpayments against certain payments of tax due
28 in accordance with the requirements of this section as
29 follows:

30 (1) If the taxpayer is subject to the tax imposed under
31 article thirteen of this chapter, the taxpayer may credit
32 the amount of consumers sales and service tax overpay-
33 ments against the taxpayer's quarterly or monthly
34 remittance of the tax imposed under said article
35 thirteen otherwise due; or

36 (2) If the taxpayer is subject to the tax imposed under
37 article twelve-a of this chapter, the taxpayer may credit
38 the amount of consumers sales and service tax overpay-
39 ments remaining after application of part (1) of this
40 subsection against the taxpayer's annual or semiannual
41 remittance of the tax imposed under said article twelve-
42 a otherwise due; or

43 (3) If the taxpayer is subject to the tax imposed under
44 article thirteen-a of this chapter, the taxpayer may
45 credit the amount of consumers sales and service tax
46 overpayments remaining after application of parts (1)
47 and (2) of this subsection against the taxpayer's
48 quarterly or monthly remittance of the tax imposed
49 under said article thirteen-a otherwise due; or

50 (4) If the taxpayer is subject to the tax imposed under
51 article thirteen-b of this chapter, the taxpayer may
52 credit the amount of consumers sales and service tax
53 overpayments remaining after application of parts (1),
54 (2) and (3) of this subsection against the taxpayer's
55 quarterly or monthly remittance of the tax imposed
56 under said article thirteen-b otherwise due; or

57 (5) If the taxpayer is subject to the tax imposed under
58 article twenty-four of this chapter, the taxpayer may
59 credit the amount of consumers sales and service tax
60 overpayments remaining after application of parts (1),
61 (2), (3) and (4) of this subsection against the taxpayer's
62 installment of estimated tax imposed under said article

63 twenty-four and otherwise due under section seventeen,
64 article twenty-four of this chapter; or

65 (6) If the taxpayer is subject to the tax imposed under
66 article twenty-one of this chapter, the taxpayer may
67 credit the amount of consumers sales and service tax
68 overpayments remaining after application of parts (1),
69 (2), (3), (4) and (5) of this subsection against the
70 taxpayer's installment of estimated tax imposed under
71 said article twenty-one and otherwise due under section
72 fifty-six, article twenty-one of this chapter; or

73 (7) If the taxpayer is subject to the tax imposed under
74 article twenty-three of this chapter, the taxpayer may
75 credit the amount of consumers sales and service tax
76 overpayments remaining after application of parts (1),
77 (2), (3), (4), (5) and (6) of this subsection against the
78 taxpayer's annual remittance of the tax imposed under
79 said article twenty-three and otherwise due; or

80 (8) If the taxpayer is required to deduct and withhold
81 tax under article twenty-one of this chapter, the
82 taxpayer may credit the amount of consumers sales and
83 service tax overpayments remaining after application of
84 parts (1), (2), (3), (4), (5), (6) and (7) of this subsection
85 against the taxpayer's monthly remittance of the tax
86 withheld under said article twenty-one and otherwise
87 due.

88 (d) Any person asserting or exercising a claim of
89 exemption from the tax imposed by this article under
90 subsection (b) or (c) of this section shall file with the tax
91 commissioner an application for exemption in such form
92 as the tax commissioner shall prescribe and such
93 affidavits, invoices, sales slips, records or documents as
94 the tax commissioner may require to prove or verify the
95 taxpayer's right and entitlement to such exemption. The
96 tax commissioner may inspect or examine the records,
97 books, papers, documents, affidavits, sales slips and
98 invoices of a taxpayer or any other person to verify the
99 truth and accuracy of any report or return or to
100 ascertain whether the tax imposed by this article has
101 been paid.

102 In addition to the powers of the tax commissioner set
103 forth in article ten of this chapter, as a further means

104 of obtaining the records, books, papers, documents,
105 affidavits, sales slips or invoices of a taxpayer or any
106 other person and ascertaining the amount of taxes paid
107 or due under this article or any report, form, document
108 or affidavit required under this article, the commis-
109 sioner shall have the power to examine witnesses under
110 oath; and if any witness shall fail or refuse at the request
111 of the commissioner to grant access to the books,
112 records, papers, documents, affidavits, sales slips or
113 invoices requested by the commissioner, the commis-
114 sioner shall certify the facts and the names to the circuit
115 court of the county having jurisdiction over the party
116 and such court shall thereupon issue a subpoena duces
117 tecum to such party to appear before the commissioner,
118 at a place designated within the jurisdiction of such
119 court, on a day fixed.

120 (e) All claims for refund of consumers sales and
121 service tax overpayments under subsection (b) of this
122 section shall be filed within the time limitation for filing
123 claims for refund set forth in section fourteen, article
124 ten of this chapter. Any claim for such refund or claim
125 of entitlement to such refund made or asserted after the
126 said time limitation shall be null and void, and if the
127 consumers sales and service tax overpayment has not
128 otherwise been credited against tax remittances in
129 accordance with this section, the said claims shall be
130 forfeited.

131 (f) Any credit of consumers sales and service tax
132 overpayments against taxes under subsection (c) of this
133 section shall be taken within one year after the payment
134 of the said consumers sales and service tax by the
135 consumer to the vendor. Any such credit or claim of
136 entitlement to such credit made or asserted more than
137 one year after the payment of such tax by the consumer
138 to the vendor shall be null and void, and such consumers
139 sales and service tax overpayments shall be forfeited
140 unless refunded under subsection (b) of this section.

141 (g) Any assignment of the right or entitlement to a
142 refund or credit arising under this section shall be
143 subject to strict proof, and any assignee claiming a right
144 or entitlement to an assigned refund or credit shall

145 submit an affidavit in such form as the tax commis-
146 sioner shall prescribe signed by the assignor acknowl-
147 edging the assignment. The assignee shall attest to the
148 assignment and the terms thereof on his signed appli-
149 cation filed under subsection (d) of this section for
150 refund or credit, and will be subject to the penalties
151 provided under West Virginia law for perjury for any
152 falsehood set forth therein and will be subject to the
153 penalties set forth in article nine of this chapter for any
154 violation thereof. Except as provided in this subsection
155 (g), no payment of a refund arising under this section
156 shall be made to any person other than the taxpayer
157 making the original overpayment of consumers sales
158 and service tax.

159 (h) No refund shall be due and no credit shall be
160 allowed under this section unless the taxpayer or
161 assignee shall have filed a claim for refund or a claim
162 for credit, as appropriate, with the tax commissioner in
163 accordance with this section.

164 (i) Any claim for a refund of consumers sales and
165 service tax overpayments or for a tax credit for
166 consumers sales and service tax overpayments which is
167 not timely filed or not filed in proper form or in
168 accordance with the requirements of this section shall
169 not be construed to constitute a moral obligation of the
170 state of West Virginia for payment. No overpayment of
171 consumers sales and service tax made under this section
172 shall be subject to subsection (d), section seventeen,
173 article ten of this chapter or subdivision (1), subsection
174 (e), section seventeen, article ten of this chapter.

175 (j) The provisions of this section become effective after
176 the thirtieth day of June, one thousand nine hundred
177 eighty-seven.

***§11-15-9c. Delivery of a certificate of exemption in lieu
of tax.**

1 Persons having a right to exemption set forth in
2 subsections (a), (b), (c), (d), (h), (j), (m), (n), (p), (r), (s),
3 (t), (u), (x) and (y) shall, in lieu of paying the tax imposed
4 by this article, execute a certificate of exemption in such
5 form as the tax commissioner may require, and such

* Clerk's Note: This section was also amended by S. B. 760, which passed subsequent to this act.

6 executed exemption certificate shall be delivered to the
7 vendor in such manner as the tax commissioner may
8 require.

***§11-15-9d. Direct pay permits.**

1 (a) Notwithstanding any other provision of this
2 article, the tax commissioner may, in his discretion,
3 authorize a person (as defined in section two) that is a
4 user, consumer, distributor or lessee to which sales or
5 leases of tangible personal property are made or services
6 provided to pay any tax levied by this article or article
7 fifteen-a of this chapter directly to the tax commissioner
8 and waive the collection of the tax by that person's
9 vendor. No such authority shall be granted or exercised
10 except upon application to the tax commissioner and
11 after issuance by the tax commissioner of a direct pay
12 permit for purchases made from the vendor or vendors
13 specified therein. If a direct pay permit is issued, then
14 payment of the tax imposed by this article or article
15 fifteen-a of this chapter on all sales and leases of
16 tangible personal property and sales of taxable services
17 from designated vendors shall be made directly to the
18 tax commissioner by the permit holder.

19 (b) On or before the fifteenth day of each month, every
20 permit holder shall make and file with the tax commis-
21 sioner a return for the preceding month in the form
22 prescribed by the tax commissioner showing the total
23 value of the tangible personal property so used, the
24 amount of taxable services purchased, the amount of tax
25 due from the permit holder, which amount shall be paid
26 to the tax commissioner with such return, and such
27 other information as the tax commissioner deems
28 necessary. The tax commissioner, upon written request
29 by the permit holder, may grant a reasonable extension
30 of time for the making and filing of returns and paying
31 the tax. Interest on such tax shall be chargeable on
32 every such extended payment at the rate determined in
33 accordance with section seventeen, article ten of this
34 chapter.

35 (c) A permit issued pursuant to this section shall

* Clerk's Note: This section was also amended by S. B. 760, which passed subsequent to this act.

36 continue to be valid until expiration of the business's
37 registration year under article twelve of this chapter.
38 This permit shall automatically be renewed when the
39 business's business registration certificate is issued for
40 the next succeeding fiscal year, unless the permit is
41 surrendered by the holder or canceled for cause by the
42 tax commissioner.

43 (d) Persons who hold a direct payment permit which
44 has not been canceled shall not be required to pay the
45 tax to the vendor as otherwise provided in this article
46 or article fifteen-a of this chapter. Such persons shall
47 notify each vendor from whom tangible personal
48 property is purchased or leased or from whom services
49 are purchased of their direct payment permit number
50 and that the tax is being paid directly to the tax
51 commissioner. Upon receipt of such notice, such vendor
52 shall be absolved from all duties and liabilities imposed
53 by this chapter for the collection and remittance of the
54 tax with respect to sales, distributions, leases or storage
55 of tangible personal property and sales of services to
56 such permit holder. Vendors who make sales upon
57 which the tax is not collected by reason of the provisions
58 of this section shall maintain records in such manner
59 that the amount involved and identity of each such
60 purchaser may be ascertained.

61 (e) Upon the expiration, cancellation or surrender of
62 a direct payment permit, the provisions of this chapter,
63 without regard to this section, shall thereafter apply to
64 the person who previously held such permit, and such
65 person shall promptly so notify in writing vendors from
66 whom purchases, leases and storage of tangible personal
67 property are made of such cancellation or surrender.
68 Upon receipt of such notice, the vendor shall be subject
69 to the provisions of this chapter, without regard to this
70 section, with respect to all sales, distributions, leases or
71 storage of tangible personal property, thereafter made
72 to or for such person.

ARTICLE 15A. USE TAX.

§11-15A-2. Imposition of tax; rate; inclusion of service as taxable on and
after the first day of July, one thousand nine hundred eighty-
seven.

§11-15A-3. Exemptions.

- §11-15A-3b. Method for claiming exemptions, refunds of tax, credit against other taxes.
- §11-15A-3c. Delivery of a certificate of exemption in lieu of tax.
- §11-15A-3d. Direct pay permits.
- §11-15A-18. Seller must show sale not at retail; presumption.

§11-15A-2. Imposition of tax; rate; inclusion of services as taxable on and after the first day of July, one thousand nine hundred eighty-seven.

1 (a) An excise tax is hereby levied and imposed on the
2 use in this state of tangible personal property or taxable
3 services, to be collected and paid as hereinafter
4 provided, at the rate of five percent of the purchase
5 price of such property or taxable services. "Taxable
6 services," for the purposes of this article, means services
7 of the nature that are subject to the tax imposed by
8 article fifteen of this chapter. In this article, wherever
9 the words "tangible personal property" or "property"
10 appear, the same shall include the words "or taxable
11 services," where the context so requires.

12 (b) Such tax is hereby imposed upon every person
13 using tangible personal property or taxable services
14 within this state. That person's liability is not extin-
15 guished until such tax has been paid. A receipt with the
16 tax separately stated thereon issued by a retailer
17 engaged in business in this state, or by a foreign retailer
18 who is authorized by the tax commissioner to collect the
19 tax imposed by this article, relieves the purchaser from
20 further liability for the tax to which the receipt refers.

21 (c) Purchases of tangible personal property or taxable
22 services made from the government of the United States
23 or any of its agencies by ultimate consumers shall be
24 subject to the tax imposed by this section. Industrial
25 materials and equipment owned by the federal govern-
26 ment within the state of West Virginia of a character
27 not ordinarily readily obtainable within the state, shall
28 not be subject to use tax when sold, if such industrial
29 materials and equipment would not be subject to use
30 taxes if such were sold outside of the state for use in
31 West Virginia.

32 (d) This article shall not apply to purchases made by
33 counties or municipal corporations.

34 (e) The provisions of this section, as amended, shall
35 apply on and after the first day of July, one thousand
36 nine hundred eighty-seven.

§11-15A-3. Exemptions.

1 (a) The use in this state of the following tangible
2 personal property and services is hereby specifically
3 exempted from the tax imposed by this article to the
4 extent specified:

5 (1) All articles of tangible personal property brought
6 into the state of West Virginia by a nonresident
7 individual thereof for his or her use or enjoyment while
8 temporarily within this state or while passing through
9 this state, except gasoline and special fuel: *Provided,*
10 That fuel contained in the supply tank of a motor vehicle
11 that is not a motor carrier shall not be taxable.

12 (2) Tangible personal property or services, the gross
13 receipts from the sale of which are exempt from the
14 sales tax by the terms of article fifteen, chapter eleven
15 of the code of West Virginia, one thousand nine hundred
16 thirty-one, as amended, and the property or services are
17 being used for the purpose for which it was exempted.

18 (3) Tangible personal property, the gross receipts
19 from the sale of which are derived from the sale of
20 machinery, supplies and materials to contractors, or to
21 persons engaged in the business of manufacturing,
22 transportation, transmission, communication or in the
23 production of natural resources in this state: *Provided,*
24 That purchases of gasoline or special fuel from distrib-
25 utors or importers shall be taxable: *Provided, however,*
26 That on and after the first day of July, one thousand
27 nine hundred eighty-seven, the full or partial exemption
28 as provided in this subsection and to persons engaged
29 in the businesses specified herein or to the other
30 businesses or organizations as specified in section nine,
31 article fifteen of this chapter, and in respect of tangible
32 personal property or services, provided for in such latter
33 section, shall be the same, and shall not apply to
34 purchases of gasoline or special fuel.

35 (4) Tangible personal property or services, the gross

36 receipts or the gross proceeds from the sale of which are
37 required to be included in the measure of the tax
38 imposed by article fifteen, chapter eleven of the code of
39 West Virginia, one thousand nine hundred thirty-one, as
40 amended, and upon which the tax imposed by said
41 article fifteen has been paid.

42 (5) Tangible personal property or services, the sale of
43 which in this state is not subject to the West Virginia
44 consumers sales tax.

45 (6) Mobile homes utilized by the owners thereof as
46 their principal year-round residence and dwelling:
47 *Provided*, That use of these mobile homes shall be
48 subject to tax at the three percent rate.

49 (b) The provisions of this section, as amended, shall
50 apply on and after the first day of July, one thousand
51 nine hundred eighty-seven.

***§11-15A-3b. Method for claiming exemptions, refunds of
tax, credit against other taxes.**

1 (a) Any person having a right or claim to an exemp-
2 tion from the tax imposed by this article by reason of
3 any exemption set forth in section nine, article fifteen
4 of this chapter except those exemptions set forth in
5 subsections (a), (b), (c), (d), (h), (j), (m), (n), (p), (r), (s),
6 (t), (u), (x) and (y) of said section nine shall pay to the
7 vendor the tax imposed by this article and may exercise
8 or assert such exemption only in accordance with
9 subsection (b) or subsection (c) of this section.

10 (b) Any person who has paid the tax imposed by this
11 article and who may lawfully claim under section three
12 of this article any exemption set forth under a subsec-
13 tion of section nine of article fifteen not enumerated in
14 subsection (a) of this section may exercise or assert such
15 claim by filing a claim for refund of use tax overpay-
16 ments on such form and in such manner as the tax
17 commissioner may require and in accordance with the
18 requirements of this section.

19 (c) In lieu of filing a claim for refund of use tax
20 overpayments, the taxpayer may, at his option, file a
21 claim for credit on such form and in such manner as

*Clerk's Note: This section was also amended by S. B. 760, which passed subsequent to this act.

22 the tax commissioner may require and credit the
23 amount of use tax overpayments against certain pay-
24 ments of tax due in accordance with the requirements
25 of this section as follows:

26 (1) If the taxpayer is subject to the tax imposed under
27 article thirteen of this chapter, the taxpayer may credit
28 the amount of use tax overpayments against the
29 taxpayer's quarterly or monthly remittance of the tax
30 imposed under said article thirteen otherwise due; or

31 (2) If the taxpayer is subject to the tax imposed under
32 article twelve-a of this chapter, the taxpayer may credit
33 the amount of use tax overpayments remaining after
34 application of part (1) of this subsection against the
35 taxpayer's annual or semiannual remittance of the tax
36 imposed under said article twelve-a otherwise due; or

37 (3) If the taxpayer is subject to the tax imposed under
38 article thirteen-a of this chapter, the taxpayer may
39 credit the amount of use tax overpayments remaining
40 after application of parts (1) and (2) of this subsection
41 against the taxpayer's quarterly or monthly remittance
42 of the tax imposed under said article thirteen-a other-
43 wise due; or

44 (4) If the taxpayer is subject to the tax imposed under
45 article thirteen-b of this chapter, the taxpayer may
46 credit the amount of use tax overpayments remaining
47 after application of parts (1), (2) and (3) of this
48 subsection against the taxpayer's quarterly or monthly
49 remittance of the tax imposed under said article
50 thirteen-b otherwise due; or

51 (5) If the taxpayer is subject to the tax imposed under
52 article twenty-four of this chapter, the taxpayer may
53 credit the amount of use tax overpayments remaining
54 after application of parts (1), (2), (3) and (4) of this
55 subsection against the taxpayer's installment of esti-
56 mated tax imposed under said article twenty-four and
57 otherwise due under section seventeen, article twenty-
58 four of this chapter; or

59 (6) If the taxpayer is subject to the tax imposed under
60 article twenty-one of this chapter, the taxpayer may

61 credit the amount of use tax overpayments remaining
62 after application of parts (1), (2), (3), (4) and (5) of this
63 subsection against the taxpayer's installment of esti-
64 mated tax imposed under said article twenty-one and
65 otherwise due under section fifty-six, article twenty-one
66 of this chapter; or

67 (7) If the taxpayer is subject to the tax imposed under
68 article twenty-three of this chapter, the taxpayer may
69 credit the amount of use tax overpayments remaining
70 after application of parts (1), (2), (3), (4), (5) and (6) of
71 this subsection against the taxpayer's annual remittance
72 of the tax imposed under said article twenty-three and
73 otherwise due; or

74 (8) If the taxpayer is required to deduct and withhold
75 tax under article twenty-one of this chapter, the
76 taxpayer may credit the amount of use tax overpay-
77 ments remaining after application of parts (1), (2), (3),
78 (4), (5), (6) and (7) of this subsection against the
79 taxpayer's monthly remittance of the tax withheld
80 under said article twenty-one and otherwise due.

81 (d) Any person asserting or exercising a claim of
82 exemption from the tax imposed by this article under
83 subsection (b) or (c) of this section shall file with the tax
84 commissioner an application for exemption in such form
85 as the tax commissioner shall prescribe and such
86 affidavits, invoices, sales slips, records or documents as
87 the tax commissioner may require to prove or verify the
88 taxpayer's right and entitlement to such exemption. The
89 tax commissioner may inspect or examine the records,
90 books, papers, documents, affidavits, sales slips and
91 invoices of a taxpayer or any other person to verify the
92 truth and accuracy of any report or return or to
93 ascertain whether the tax imposed by this article or
94 article fifteen of this chapter has been paid.

95 In addition to the powers of the tax commissioner set
96 forth in article ten of this chapter, as a further means
97 of obtaining the records, books, papers, documents,
98 affidavits, sales slips or invoices of a taxpayer or any
99 other person and ascertaining the amount of taxes paid
100 or due under this article or article fifteen of this chapter

101 or any report, form, document or affidavit required
102 under this article or article fifteen of this chapter, the
103 commissioner shall have the power to examine witnesses
104 under oath; and if any witness shall fail or refuse at the
105 request of the commissioner to grant access to the books,
106 records, papers, documents, affidavits, sales slips or
107 invoices requested by the commissioner, the commis-
108 sioner shall certify the facts and the names to the circuit
109 court of the county having jurisdiction of the party, and
110 such court shall thereupon issue a subpoena duces tecum
111 to such party to appear before the commissioner, at a
112 place designated within the jurisdiction of such court,
113 on a day fixed.

114 (e) All claims for refund of use tax overpayments
115 under subsection (b) of this section shall be filed within
116 the time limitation for filing claims for refund set forth
117 in section fourteen, article ten of this chapter. Any claim
118 for such refund or claim of entitlement to such refund
119 made or asserted after the said time limitation shall be
120 null and void, and if the use tax overpayment has not
121 otherwise been credited against tax remittances in
122 accordance with this section, the said claims shall be
123 forfeited.

124 (f) Any credit of use tax overpayments against taxes
125 under subsection (c) of this section shall be taken within
126 one year after the payment of the tax by the taxpayer
127 to the vendor. Any such credit or claim of entitlement
128 to such credit made or asserted more than one year after
129 the payment of such tax by the taxpayer to the vendor
130 shall be null and void, and such tax overpayments shall
131 be forfeited.

132 (g) Any assignment of the right or entitlement to a
133 refund or credit arising under this section shall be
134 subject to strict proof, and any assignee claiming a right
135 or entitlement to an assigned refund or credit shall
136 submit an affidavit in such form as the tax commis-
137 sioner shall prescribe signed by the assignor acknowl-
138 edging the assignment. The assignee shall attest to the
139 assignment and the terms thereof of his signed appli-
140 cation filed under subsection (e) of this section for
141 refund or credit, and will be subject to the penalties

142 provided under West Virginia law for perjury for any
143 falsehood set forth therein and will be subject to the
144 penalties set forth in article nine of this chapter for any
145 violation thereof. Except as provided in this subsection
146 (h), no payment of a refund arising under this section
147 shall be made to any person other than the taxpayer
148 making the original overpayment of consumers sales
149 and service tax.

150 (h) No refund shall be due and no credit shall be
151 allowed unless the taxpayer or assignee shall have filed
152 a claim for refund or a claim for credit, as appropriate,
153 with the tax commissioner in accordance with this
154 section.

155 (i) Any claim for a refund of use tax overpayments or
156 a tax credit for use tax overpayments which is not
157 timely filed or not filed in proper form or in accordance
158 with the requirements of this section shall not be
159 construed to constitute a moral obligation of the state
160 of West Virginia for payment. No overpayment of use
161 tax made under this section shall be subject to subsec-
162 tion (d), section seventeen, article ten of this chapter, or
163 subdivision (1), subsection (e), section seventeen, article
164 ten of this chapter.

165 (j) The provisions of this section become effective after
166 the thirtieth day of June, one thousand nine hundred
167 eighty-seven.

***§11-15A-3c. Delivery of a certificate of exemption in lieu
of tax.**

1 Persons having a right or claim under section three
2 of this article, to any exemption set forth in subsections
3 (a), (b), (c), (d), (h), (j), (m), (n), (p), (r), (s), (t), (u), (x)
4 and (y), section nine, article fifteen of this chapter shall,
5 in lieu of paying the tax imposed by this article, execute
6 a certificate of exemption in such form as the tax
7 commissioner may require, and such executed exemp-
8 tion certificate shall be delivered to the vendor in such
9 manner as the tax commissioner may require.

***§11-15A-3d. Direct pay permits.**

1 (a) Notwithstanding any other provision of this

* Clerk's Note: These sections were also amended by S. B. 760, which passed subsequent to this act.

2 article, the tax commissioner may, in his discretion,
3 authorize a person (as defined in section two of article
4 fifteen) that is a user, consumer, distributor or lessee to
5 which sales or leases of tangible personal property are
6 made or services provided to pay any tax levied by this
7 article or article fifteen of this chapter directly to the
8 tax commissioner and waive the collection of the tax by
9 that person's vendor. No such authority shall be granted
10 or exercised except upon application to the tax commis-
11 sioner and after issuance by the tax commissioner of a
12 direct pay permit for purchases made from the vendor
13 or vendors specified therein. If a direct pay permit is
14 issued, then payment of the tax imposed by this article
15 or article fifteen of this chapter on all sales and leases
16 of tangible personal property and sales of taxable
17 services from designated vendors shall be made directly
18 to the tax commissioner by the permit holder.

19 (b) On or before the fifteenth day of each month, every
20 permit holder shall make and file with the tax commis-
21 sioner a return for the preceding month in the form
22 prescribed by the tax commissioner showing the total
23 value of the tangible personal property so used, the
24 amount of taxable services purchased, the amount of tax
25 due from the permit holder, which amount shall be paid
26 to the tax commissioner with such return, and such
27 other information as the tax commissioner deems
28 necessary. The tax commissioner, upon written request
29 by the permit holder, may grant a reasonable extension
30 of time for the making and filing of returns and paying
31 the tax. Interest on such tax shall be chargeable on
32 every such extended payment at the rate determined in
33 accordance with section seventeen, article ten of this
34 chapter.

35 (c) A permit issued pursuant to this section shall
36 continue to be valid until expiration of the business's
37 registration year under article twelve of this chapter.
38 This permit shall automatically be renewed when the
39 business's business registration certificate is issued for
40 the next succeeding fiscal year, unless the permit is
41 surrendered by the holder or canceled for cause by the
42 tax commissioner.

43 (d) Persons who hold a direct payment permit which
44 has not been canceled shall not be required to pay the
45 tax to the vendor as otherwise provided in this article
46 or article fifteen of this chapter. Such persons shall
47 notify each vendor from whom tangible personal
48 property is purchased or leased or from whom services
49 are purchased of their direct payment permit number
50 and that the tax is being paid directly to the tax
51 commissioner. Upon receipt of such notice, such vendor
52 shall be absolved from all duties and liabilities imposed
53 by this chapter for the collection and remittance of the
54 tax with respect to sales, distributions, leases or storage
55 of tangible personal property and sales of services to
56 such permit holder. Vendors who make sales upon
57 which the tax is not collected by reason of the provisions
58 of this section shall maintain records in such manner
59 that the amount involved and identity of each such
60 purchaser may be ascertained.

61 (e) Upon the expiration, cancellation or surrender of
62 a direct payment permit, the provisions of this chapter,
63 without regard to this section, shall thereafter apply to
64 the person who previously held such permit, and such
65 person shall promptly so notify in writing vendors from
66 whom purchases, leases and storage of tangible personal
67 property are made of such cancellation or surrender.
68 Upon receipt of such notice, the vendor shall be subject
69 to the provisions of this chapter, without regard to this
70 section, with respect to all sales, distributions, leases or
71 storage of tangible personal property, thereafter made
72 to or for such person.

**§11-15A-18. Seller must show sale not at retail;
presumption.**

1 The burden of proving that a sale was not taxable
2 shall be upon the seller, unless, for sales subject to
3 section three-c of this article, he, in good faith, takes
4 from the purchaser a certificate signed by and bearing
5 the address of the purchaser setting forth the reason for
6 exemption of the sale from imposition of the tax. To
7 prevent evasion it shall be presumed that all proceeds
8 are subject to the tax until the contrary is clearly

9 established. This certificate shall be substantially in the
10 form prescribed by the tax commissioner.

ARTICLE 21. PERSONAL INCOME TAX.

- §11-21-4e. Rate of tax—Taxable periods beginning on or after January 1, 1987.
- §11-21-4f. Effect of rate changes during taxable year.
- §11-21-9. Meaning of terms.
- §11-21-11. West Virginia taxable income of resident individual.
- §11-21-12. West Virginia adjusted gross income of resident individual.
- §11-21-13. West Virginia deduction of resident individual.
- §11-21-14. West Virginia standard deduction of a resident individual.
- §11-21-15. West Virginia itemized deduction of a resident individual.
- §11-21-16. West Virginia personal exemptions of resident individual.
- §11-21-31. West Virginia taxable income of nonresident individual.
- §11-21-32. West Virginia adjusted gross income of a nonresident individual.
- §11-21-33. West Virginia deduction of a nonresident individual.
- §11-21-34. West Virginia standard deduction of a nonresident individual.
- §11-21-35. West Virginia itemized deduction of a nonresident individual.
- §11-21-43. Credit for consumers sales and service tax and use tax paid.
- §11-21-51. Returns and liabilities.
- §11-21-74. Employer's return and payment of withheld taxes.

*§11-21-4e. Rate of tax — Taxable periods beginning on or after January 1, 1987.

1 (a) *Rate of tax on individuals filing joint returns or*
2 *individual returns, estates or trusts.* — The tax imposed
3 by section three of this article on the West Virginia
4 taxable income shall be determined in accordance with
5 the following table:

6	If the West Virginia taxable	
7	income is:	The tax is:
8	Not over \$10,000	3% of the taxable income
9	Over \$10,000 but not over \$25,000	\$300.00 plus 4% of excess
10		over \$10,000
11	Over \$25,000 but not over \$40,000	\$900.00 plus 5% of excess
12		over \$25,000
13	Over \$40,000 but not over \$60,000	\$1650.00 plus 6% of excess
14		over \$40,000
15	Over \$60,000	\$2850.00 plus 6.5% of
16		excess over \$60,000

17 (b) *Applicability of this section.*— The provisions of
18 this section shall be applicable in determining the rate
19 of tax imposed by this article for all taxable years
20 beginning after the thirty-first day of December, one
21 thousand nine hundred eighty-six.

*Clerk's Note: This section was also amended by H. B. 3204, which passed subsequent to this act.

§11-21-4f. Effect of rate changes during taxable year.

1 (a) If any rate of tax imposed by this article changes
2 to become effective after the thirty-first day of De-
3 cember, of a calendar year, and if the taxable year
4 includes the effective date of the change of rate (unless
5 that date is the first day of the taxable year) then: (1)
6 Tentative taxes shall be computed by applying the rate
7 for the period before the effective date of the change of
8 rate, and the rate for the period on and after such date,
9 to the taxable income for the entire taxable year; and
10 (2) the tax for such taxable year shall be the sum of that
11 proportion of each tentative tax which the number of
12 months in each period bears to the number of months
13 in the entire taxable year.

14 (b) For purposes of subsection (a):

15 (1) If the rate changes for taxable years "beginning
16 after" or "ending after" a certain date, the following day
17 shall be considered the effective date of the change; and

18 (2) If a rate changes for taxable years "beginning on
19 or after" a certain date, that date shall be considered
20 the effective date of the change of rate.

§11-21-9. Meaning of terms.

1 Any term used in this article shall have the same
2 meaning as when used in a comparable context in the
3 laws of the United States relating to income taxes,
4 unless a different meaning is clearly required. Any
5 reference in this article to the laws of the United States
6 shall mean the provisions of the Internal Revenue Code
7 of 1986, as amended, and such other provisions of the
8 laws of the United States as relate to the determination
9 of income for federal income tax purposes. All amend-
10 ments made to the laws of the United States prior to
11 the first day of January, one thousand nine hundred
12 eighty-seven, shall be given effect in determining the
13 taxes imposed by this article for any taxable year
14 beginning the first day of January, one thousand nine
15 hundred eighty-six, or thereafter, but no amendment to
16 the laws of the United States made on or after the first

17 day of January, one thousand nine hundred eighty-
18 seven, shall be given effect.

***§11-21-11. West Virginia taxable income of resident individual.**

1 (a) *General.* — The West Virginia taxable income of
2 a resident individual shall be his West Virginia adjusted
3 gross income less his West Virginia personal exemp-
4 tions, as determined under this part.

5 (b) *Husband and wife.* — (1) If the federal taxable
6 income of husband or wife is determined on a separate
7 federal return, their West Virginia taxable incomes
8 shall be separately determined.

9 (2) If the federal taxable income of husband and wife
10 is determined on a joint federal return, or if neither files
11 a federal return:

12 (A) Their tax shall be determined on their joint West
13 Virginia taxable income, or

14 (B) Separate taxes may be determined on their
15 separate West Virginia taxable incomes if they so elect
16 and if they comply with the requirements of the tax
17 commissioner in setting forth information on a single
18 form: *Provided*, That the election allowed in subpara-
19 graph (B) shall not be available for a husband and wife
20 for taxable years beginning after the thirty-first day of
21 December, one thousand nine hundred eighty-six.

22 (3) If either husband or wife is a resident and the
23 other is a nonresident, separate taxes shall be deter-
24 mined on their separate West Virginia taxable incomes
25 on such single or separate forms as may be required by
26 the tax commissioner, unless both elect to determine
27 their joint West Virginia taxable income as if both were
28 residents.

29 (c) *Effective date.* — This section, as amended, shall
30 apply to all taxable years after the thirty-first day of
31 December, one thousand nine hundred eighty-six.

***§11-21-12. West Virginia adjusted gross income of resident individual.**

1 (a) *General.* — The West Virginia adjusted gross

* Clerk's Note: These sections were also amended by H. B. 3204, which passed subsequent to this act.

2 income of a resident individual means his federal
3 adjusted gross income as defined in the laws of the
4 United States for the taxable year with the modifica-
5 tions specified in this section.

6 (b) *Modifications increasing federal adjusted gross*
7 *income.* — There shall be added to federal adjusted gross
8 income unless already included therein the following
9 items, except that modifications (5), (6) and (7) shall be
10 required only with respect to tax periods ending on or
11 after the first day of January, one thousand nine
12 hundred eighty-two:

13 (1) Interest income on obligations of any state other
14 than this state, or of a political subdivision of any such
15 other state unless created by compact or agreement to
16 which this state is a party;

17 (2) Interest or dividend income on obligations or
18 securities of any authority, commission or instrumental-
19 ity of the United States, which the laws of the United
20 States exempt from federal income tax but not from
21 state income taxes;

22 (3) Income taxes imposed by this state or any other
23 taxing jurisdiction, to the extent deductible in determin-
24 ing federal adjusted gross income and not credited
25 against federal income tax: *Provided*, That this modifi-
26 cation shall not be made for taxable years beginning
27 after the thirty-first day of December, one thousand nine
28 hundred eighty-six;

29 (4) Interest on indebtedness incurred or continued to
30 purchase or carry obligations or securities the income
31 from which is exempt from tax under this article, to the
32 extent deductible in determining federal adjusted gross
33 income;

34 (5) Interest on a depository institution tax-exempt
35 savings certificate which is allowed as an exclusion from
36 federal gross income under section 128 of the Internal
37 Revenue Code, for the federal taxable year;

38 (6) The amount allowed as a deduction from federal
39 gross income under section 221 of the Internal Revenue
40 Code by married couples who file a joint federal return

41 for the federal taxable year: *Provided*, That this
42 modification shall not be made for taxable years
43 beginning after the thirty-first day of December, one
44 thousand nine hundred eighty-six; and

45 (7) The deferral value of certain income that is not
46 recognized for federal tax purposes, which value shall
47 be an amount equal to a percentage of the amount
48 allowed as a deduction in determining federal adjusted
49 gross income pursuant to the accelerated cost recovery
50 system under section 168 of the Internal Revenue Code
51 for the federal taxable year, with the percentage of the
52 federal deduction to be added as follows with respect to
53 the following recovery property: Three-year property—
54 no modification; five-year property—ten percent; ten-
55 year property—fifteen percent; fifteen-year public
56 utility property—twenty-five percent; and fifteen-year
57 real property—thirty-five percent: *Provided*, That this
58 modification shall not apply to any person whose federal
59 deduction is determined by the use of the straight line
60 method: *Provided, however*, That this modification shall
61 not be made for taxable years beginning after the thirty-
62 first day of December, one thousand nine hundred
63 eighty-six;

64 (c) *Modifications reducing federal adjusted gross*
65 *income.* — There shall be subtracted from federal
66 adjusted gross income to the extent included therein:

67 (1) Interest income on obligations of the United States
68 and its possessions to the extent includible in gross
69 income for federal income tax purposes;

70 (2) Interest or dividend income on obligations or
71 securities of any authority, commission or instrumental-
72 ity of the United States to the extent includible in gross
73 income for federal income tax purposes but exempt
74 from state income taxes under the laws of the United
75 States, including federal interest dividends paid to
76 shareholders of a regulated investment company, under
77 section 852 of the Internal Revenue Code for taxable
78 years ending after the thirtieth day of June, one
79 thousand nine hundred eighty-seven;

80 (3) Any gain from the sale or other disposition of

81 property having a higher fair market value on the first
82 day of January, one thousand nine hundred sixty-one,
83 than the adjusted basis at said date for federal income
84 tax purposes: *Provided*, That the amount of this
85 adjustment is limited to that portion of any such gain
86 which does not exceed the difference between such fair
87 market value and such adjusted basis: *Provided*,
88 *however*, That if such gain is considered a long-term
89 capital gain for federal income tax purposes, the
90 modification shall be limited to forty percent of such
91 portion of the gain: *Provided further*, That this modifi-
92 cation shall not be made for taxable years beginning
93 after the thirty-first day of December, one thousand nine
94 hundred eighty-six;

95 (4) The amount of any refund or credit for overpay-
96 ment of income taxes imposed by this state, or any other
97 taxing jurisdiction, to the extent properly included in
98 gross income for federal income tax purposes;

99 (5) Annuities, retirement allowances, returns of
100 contributions and any other benefit received under the
101 public employees retirement system, the department of
102 public safety death, disability and retirement fund, the
103 state teachers retirement system and all forms of
104 military retirement, including regular armed forces,
105 reserves and national guard, including any survivorship
106 annuities derived therefrom, to the extent includible in
107 gross income for federal income tax purposes: *Provided*,
108 That notwithstanding any provisions in this code to the
109 contrary this modification shall be limited to the first
110 two thousand dollars of benefits received under the
111 public employees retirement system, the state teachers
112 retirement system and all forms of military retirement
113 including regular armed forces, reserves and national
114 guard for taxable years beginning after the thirty-first
115 day of December, one thousand nine hundred eighty-six;

116 (6) Retirement income received in the form of pen-
117 sions and annuities after the thirty-first day of De-
118 cember, one thousand nine hundred seventy-nine, under
119 any police or firemen's retirement system, including any
120 survivorship annuities derived therefrom, to the extent

121 includible in gross income for federal income tax
122 purposes;

123 (7) Federal adjusted gross income in the amount of six
124 thousand dollars received from any source after the
125 thirty-first day of December, one thousand nine hundred
126 eighty-six, by any person who has attained the age of
127 sixty-five on or before the last day of the taxable year,
128 or by any person certified by proper authority as
129 permanently and totally disabled, regardless of age, on
130 or before the last day of the taxable year, to the extent
131 includible in federal adjusted gross income for federal
132 tax purposes: *Provided*, That if a person has a medical
133 certification from a prior year and he is still perman-
134 ently and totally disabled, a copy of the original
135 certificate is acceptable as proof of disability. A copy of
136 the form filed for the federal disability income tax
137 exclusion is acceptable: *Provided, however*, That

138 (i) Where the total modification under subdivisions
139 (1), (2), (5) and (6) of this subsection is eight thousand
140 dollars per person or more, no deduction shall be
141 allowed under this subdivision, and

142 (ii) Where the total modification under subdivisions
143 (1), (2), (5) and (6) of this subsection is less than eight
144 thousand dollars per person, the total modification
145 allowed under this subdivision for all gross income
146 received by such person shall be limited to the differ-
147 ence between eight thousand dollars and the sum of
148 modifications under such subdivisions;

149 (8) Federal adjusted gross income in the amount of six
150 thousand dollars received from any source after the
151 thirty-first day of December, one thousand nine hundred
152 eighty-six, by the surviving spouse of any person who
153 had attained the age of sixty-five or who had been
154 certified as permanently and totally disabled, to the
155 extent includible in federal adjusted gross income for
156 federal tax purposes: *Provided*, That

157 (i) Where the total modification under subdivisions
158 (1), (2), (5), (6) and (7) of this subsection is eight thousand
159 dollars or more, no deduction shall be allowed under this
160 subdivision, and

161 (ii) Where the total modification under subdivisions
162 (1), (2), (5), (6) and (7) of this subsection is less than eight
163 thousand dollars per person, the total modification
164 allowed under this subdivision for all gross income
165 received by such person shall be limited to the differ-
166 ence between eight thousand dollars and the sum of such
167 subdivisions;

168 (9) Any pay or allowances received, after the thirty-
169 first day of December, one thousand nine hundred
170 seventy-nine, by West Virginia residents who have not
171 attained the age of sixty-five, as compensation for active
172 service in the armed forces of the United States:
173 *Provided*, That such deduction shall be limited to an
174 amount not to exceed four thousand dollars: *Provided*,
175 *however*, That this modification shall not be made for
176 taxable years beginning after the thirty-first day of
177 December, one thousand nine hundred eighty-six;

178 (10) Gross income to the extent included in federal
179 adjusted gross income under section 86 of the Internal
180 Revenue Code for federal income tax purposes:
181 *Provided*, That this modification shall not be made for
182 taxable years beginning after the thirty-first day of
183 December, one thousand nine hundred eighty-six;

184 (11) The amount of any lottery prize awarded by the
185 West Virginia state lottery commission, to the extent
186 properly included in gross income for federal income tax
187 purposes; and

188 (12) Any other income which this state is prohibited
189 from taxing under the laws of the United States.

190 (d) *Modification for West Virginia fiduciary adjust-*
191 *ment.* — There shall be added to or subtracted from
192 federal adjusted gross income, as the case may be, the
193 taxpayer's share, as beneficiary of an estate or trust, of
194 the West Virginia fiduciary adjustment determined
195 under section nineteen of this article.

196 (e) *Partners.* — The amounts of modifications re-
197 quired to be made under this section by a partner, which
198 relate to items of income, gain, loss or deduction of a
199 partnership, shall be determined under section seven-
200 teen of this article.

201 (f) *Husband and wife.* — If husband and wife deter-
202 mine their federal income tax on a joint return but
203 determine their West Virginia income taxes separately,
204 they shall determine their West Virginia adjusted gross
205 incomes separately as if their federal adjusted gross
206 incomes had been determined separately.

§11-21-13. West Virginia deduction of resident individual.

1 The West Virginia deduction of a resident individual
2 shall be his West Virginia standard deduction unless he
3 elects to deduct his West Virginia itemized deduction
4 under the conditions set forth in section fifteen:
5 *Provided,* That no West Virginia deduction shall be
6 allowed for taxable years beginning after the thirty-first
7 day of December, one thousand nine hundred eighty-six.

§11-21-14. West Virginia standard deduction of a resident individual.

1 (a) *General.* — The West Virginia standard deduction
2 of a resident individual, or of husband and wife whose
3 West Virginia taxable income is determined jointly,
4 shall be ten per centum of West Virginia adjusted gross
5 income or one thousand dollars, whichever is less.

6 (b) *Husband and wife determining income separately.*
7 — The West Virginia standard deductions of husband
8 and wife whose West Virginia taxable incomes are
9 determined separately (whether or not on a single form)
10 shall not exceed ten per centum of the aggregate of their
11 separate West Virginia adjusted gross incomes or one
12 thousand dollars, whichever is less, but may be taken
13 by either or divided between them in such proportions
14 as they may elect.

15 (c) *Expiration.*— The West Virginia standard deduc-
16 tion provided in this section shall not apply to taxable
17 years beginning after the thirty-first day of December,
18 one thousand nine hundred eighty-six.

§11-21-15. West Virginia itemized deduction of a resident individual.

1 (a) *General.* — If federal taxable income of a resident

2 individual is determined by itemizing deductions from
3 his federal adjusted gross income, he may elect to deduct
4 his West Virginia itemized deduction in lieu of his West
5 Virginia standard deduction. The West Virginia item-
6 ized deduction of a resident individual means the total
7 amount of his deductions from federal adjusted gross
8 income, other than federal deductions for personal
9 exemptions, as provided in the laws of the United States
10 for the taxable year with the modifications specified in
11 this section.

12 (b) *Husband and wife.* — (1) A husband and wife, both
13 of whom are required to file returns under this article,
14 shall be allowed West Virginia itemized deductions only
15 if both elect to take West Virginia itemized deductions.

16 (2) The total of the West Virginia itemized deductions
17 of a husband and wife whose federal taxable income is
18 determined on a joint return, but whose West Virginia
19 taxable incomes are determined separately, may be
20 taken by either or divided between them in such
21 proportions as they may elect.

22 (c) *Modifications reducing federal itemized deductions.*
23 — The total amount of deductions from federal adjusted
24 gross income shall be reduced by the amount of such
25 federal deductions for:

26 (1) Income taxes imposed by this state or any other
27 taxing jurisdiction; and

28 (2) Interest on indebtedness incurred or continued to
29 purchase or carry obligations or securities the income
30 from which is exempt from tax under this article.

31 (d) *Partners.* — The amounts of modifications under
32 subsection (c) required to be made by a partner with
33 respect to items of deduction of a partnership shall be
34 determined under section seventeen.

35 (e) *Expiration.* — The West Virginia itemized deduc-
36 tion provided in this section shall not apply to taxable
37 years beginning after the thirty-first day of December,
38 one thousand nine hundred eighty-six.

§11-21-16. West Virginia personal exemptions of resident individual.

1 (a) *General.* — For any tax imposed under the
2 provisions of this article with respect to any taxable year
3 prior to the first day of January, one thousand nine
4 hundred eighty-three, a resident individual shall be
5 allowed a West Virginia exemption of six hundred
6 dollars for each exemption for which he is entitled to
7 a deduction for the taxable year for federal income tax
8 purposes. With respect to any taxable year beginning on
9 or after the first day of January, one thousand nine
10 hundred eighty-three, and prior to the first day of
11 January, one thousand nine hundred eighty-four, said
12 exemption shall be seven hundred dollars; with respect
13 to any taxable year beginning on or after the first day
14 of January, one thousand nine hundred eighty-four, said
15 exemption shall be eight hundred dollars; and with
16 respect to any taxable year beginning on or after the
17 first day of January, one thousand nine hundred eighty-
18 seven, said exemption shall be two thousand dollars.

19 (b) *Husband and wife.* — If the West Virginia income
20 taxes of a husband and wife are separately determined
21 but their federal income tax is determined on a joint
22 return, each of them shall be separately entitled, with
23 respect to any taxable year prior to the first day of
24 January, one thousand nine hundred eighty-three, to a
25 West Virginia exemption of six hundred dollars for each
26 federal exemption to which he would be separately
27 entitled for the taxable year if their federal income
28 taxes had been determined on separate returns. With
29 respect to any taxable year beginning on or after the
30 first day of January, one thousand nine hundred eighty-
31 three, and prior to the first day of January, one thousand
32 nine hundred eighty-four, said exemption shall be seven
33 hundred dollars; with respect to any taxable year
34 beginning on or after the first day of January, one
35 thousand nine hundred eighty-four, said exemption shall
36 be eight hundred dollars; and with respect to any
37 taxable year beginning on or after the first day of
38 January, one thousand nine hundred eighty-seven, said
39 exemption shall be two thousand dollars.

40 (c) *Surviving spouse.* — For taxable years beginning
41 after the thirty-first day of December, one thousand nine
42 hundred eighty-six, a surviving spouse shall be allowed
43 one additional exemption for the two taxable years
44 beginning after the year of death of the deceased spouse.

§11-21-31. West Virginia taxable income of nonresident individual.

1 (a) *General.* — The West Virginia taxable income of
2 a nonresident individual shall be his West Virginia
3 adjusted gross income less his West Virginia personal
4 exemptions, as determined under this part.

5 (b) *Husband and wife.* — (1) If the federal taxable
6 income of husband or wife, both of whom are nonres-
7 idents, is determined on a separate federal return, their
8 West Virginia taxable incomes shall be separately
9 determined.

10 (2) If the federal taxable income of husband and wife,
11 both of whom are nonresidents, is determined on a joint
12 federal return, or if neither files a federal return:

13 (A) Their tax shall be determined on their joint West
14 Virginia taxable income, or

15 (B) Separate taxes may be determined on their
16 separate West Virginia taxable incomes if they so elect
17 and if they comply with the requirements of the tax
18 commissioner in setting forth information on a single
19 form.

20 (3) If either husband or wife is a resident and the
21 other is a nonresident, separate taxes shall be deter-
22 mined on their separate West Virginia taxable incomes
23 on such single or separate forms as may be required by
24 the tax commissioner, unless both elect to determine
25 their joint West Virginia taxable income as if both were
26 residents.

27 (c) *Effective date.*— This section, as amended, shall
28 apply to all taxable years beginning after the thirty-first
29 day of December, one thousand nine hundred eighty-six.

§11-21-32. West Virginia adjusted gross income of a nonresident individual.

1 (a) *General.* — The West Virginia adjusted gross

2 income of a nonresident individual shall be the sum of
3 the following:

4 (1) The net amount of items of income, gain, loss and
5 deduction entering into his federal adjusted gross
6 income, as defined in the laws of the United States for
7 the taxable year, derived from or connected with West
8 Virginia sources, including:

9 (A) His distributive share of partnership income,
10 gain, loss and deduction, determined under section
11 thirty-seven; and

12 (B) His share of estate or trust income, gain, loss and
13 deduction, determined under section thirty-nine; and

14 (2) The portion of the modifications described in
15 subsections (b) and (c) of section twelve which relate to
16 income derived from West Virginia sources (including
17 any modifications attributable to him as a partner).

18 (b) *Income and deductions from West Virginia sources.*
19 — (1) Items of income, gain, loss and deduction derived
20 from or connected with West Virginia sources shall be
21 those items attributable to:

22 (A) The ownership of any interest in real or tangible
23 personal property in this state; or

24 (B) A business, trade, profession or occupation carried
25 on in this state.

26 (2) Income from intangible personal property, includ-
27 ing annuities, dividends, interest and gains from the
28 disposition of intangible personal property, shall
29 constitute income derived from West Virginia sources
30 only to the extent that such income is from property
31 employed in a business, trade, profession or occupation
32 carried on in this state.

33 (3) Deductions with respect to capital losses, net long-
34 term capital gains and net operating losses shall be
35 based solely on income, gain, loss and deduction derived
36 from or connected with West Virginia sources, under
37 regulations of the tax commissioner, but otherwise shall
38 be determined in the same manner as the corresponding
39 federal deductions.

40 (c) *Income and deductions partly from West Virginia*
41 *sources.* — If a business, trade, profession or occupation
42 is carried on partly within and partly without this state,
43 as determined under regulations of the tax commis-
44 sioner, the items of income, gain, loss and deduction
45 derived from or connected with West Virginia sources
46 shall be determined by apportionment and allocation
47 under such regulation.

48 (d) *Purchase and sale for own account.* — A nonres-
49 ident, other than a dealer holding property primarily for
50 sale to customers in the ordinary course of his trade or
51 business, shall not be deemed to carry on a business,
52 trade, profession or occupation in this state solely by
53 reason of the purchase and sale of property for his own
54 account.

55 (e) *Husband and wife.* — If husband and wife deter-
56 mine their federal income tax on a joint return but
57 determine their West Virginia income taxes separately,
58 they shall determine their West Virginia adjusted gross
59 incomes separately as if their federal adjusted gross
60 incomes had been determined separately.

§11-21-33. West Virginia deduction of a nonresident individual.

1 The West Virginia deduction of a nonresident individ-
2 ual shall be his West Virginia standard deduction unless
3 he elects to deduct his West Virginia itemized deduction
4 under the conditions set forth in section thirty-five:
5 *Provided,* That no West Virginia deduction shall be
6 allowed for taxable years beginning after the thirty-first
7 day of December, one thousand nine hundred eighty-six.

§11-21-34. West Virginia standard deduction of a nonresident individual.

1 The West Virginia standard deduction of a nonresi-
2 dent individual shall be ten per centum of his West
3 Virginia adjusted gross income, or one thousand dollars,
4 whichever is less. The West Virginia standard deduction
5 of a nonresident husband or wife shall be determined
6 under the rules of section fourteen: *Provided,* That no

7 West Virginia standard deduction shall be allowed for
8 taxable years beginning after the thirty-first day of
9 December, one thousand nine hundred eighty-six.

§11-21-35. West Virginia itemized deduction of a nonresident individual.

1 (a) *General.* — If federal taxable income of a nonres-
2 ident individual is determined by itemizing deductions
3 from his federal adjusted gross income, he may elect to
4 deduct his West Virginia itemized deduction in lieu of
5 his West Virginia standard deduction. The West
6 Virginia itemized deduction of a nonresident individual
7 shall be the same as the total amount of the following
8 of his deductions from federal adjusted gross income, as
9 provided in the laws of the United States for the taxable
10 year (including any items attributable to him as a
11 partner):

12 (1) Deductions for contributions or gifts to this state
13 or to any political subdivision thereof, or to any
14 corporation, trust, community chest, fund, foundation or
15 other entity organized or operated under the laws of this
16 state;

17 (2) Deductions for alimony or separate maintenance
18 payments includible in the West Virginia adjusted gross
19 income of the recipient;

20 (3) Deductions for losses of real or tangible personal
21 property having an actual situs in this state, arising
22 from fire, storm, shipwreck or other casualty, or from
23 theft;

24 (4) Deductions, with respect to real or tangible
25 personal property having an actual situs in this state,
26 for losses (other than capital losses) incurred in any
27 transaction entered into for profit but not connected
28 with the taxpayer's trade or business; and

29 (5) Deductions determined under regulations of the
30 tax commissioner to be connected with his West
31 Virginia adjusted gross income, except deductions for
32 income taxes imposed by this state or any other taxing
33 jurisdiction.

34 (b) *Husband and wife.* — (1) A husband and wife, both
35 of whom are required to file returns under this article,
36 shall be allowed West Virginia itemized deductions only
37 if both elect to take West Virginia itemized deductions.

38 (2) The total of the West Virginia itemized deductions
39 of a husband and wife whose federal taxable income is
40 determined on a joint return but whose West Virginia
41 taxable incomes are determined separately may be
42 taken by either or divided between them as they may
43 elect.

44 (c) *Expiration.* — The West Virginia itemized deduc-
45 tion provided in this section shall not apply to taxable
46 years beginning after the thirty-first day of December,
47 one thousand nine hundred eighty-six.

**§11-21-43. Credit for consumers sales and service tax and
use tax paid.**

1 The tax imposed by this article shall be subject to the
2 credit set forth in section nine-b, article fifteen of this
3 chapter and the credit set forth in section three-b,
4 article fifteen-a of this chapter.

***§11-21-51. Returns and liabilities.**

1 (a) *General.* — On or before the fifteenth day of the
2 fourth month following the close of a taxable year, an
3 income tax return under this article shall be made and
4 filed by or for:

5 (1) Every resident individual required to file a federal
6 income tax return for the taxable year, or having West
7 Virginia adjusted gross income for the taxable year,
8 determined under section twelve in excess of the sum
9 of his West Virginia personal exemptions;

10 (2) Every resident estate or trust required to file a
11 federal income tax return for the taxable year, or
12 having any West Virginia taxable income for the
13 taxable year, determined under section eighteen;

14 (3) Every nonresident individual having any West
15 Virginia adjusted gross income for the taxable year,
16 determined under section thirty-two, in excess of the
17 sum of his West Virginia personal exemptions; and

* Clerk's Note: This section was also amended by H. B. 3204, which passed subsequent to this act.

18 (4) Every nonresident estate or trust having items of
19 income or gain derived from West Virginia sources,
20 determined in accordance with the applicable rules of
21 section thirty-two as in the case of a nonresident
22 individual, in excess of its West Virginia exemption.

23 (b) *Husband and wife.* — (1) If the federal income tax
24 liability of husband or wife is determined on a separate
25 federal return, their West Virginia income tax liabilities
26 and returns shall be separate.

27 (2) If the federal income tax liabilities of husband and
28 wife other than a husband and wife described in
29 subdivision (3) of this subsection (b) are determined on
30 a joint federal return, or if neither files a federal return:

31 (A) They shall file a joint West Virginia income tax
32 return, and their tax liabilities shall be joint and
33 several, or

34 (B) They may elect to file separate West Virginia
35 income tax returns on a single form if they comply with
36 the requirements of the tax commissioner in setting
37 forth information, and in such event their tax liabilities
38 shall be separate: *Provided*, That the election allowed in
39 this subparagraph (B) shall not be available for a
40 husband and wife for taxable years beginning after the
41 thirty-first day of December, one thousand nine hundred
42 eighty-six.

43 (3) If either husband or wife is a resident and the
44 other is a nonresident, they shall file separate West
45 Virginia income tax returns on such single or separate
46 forms as may be required by the tax commissioner, and
47 in such event their tax liabilities shall be separate.

48 (c) *Decedents.* — The return for any deceased individ-
49 ual shall be made and filed by his executor, adminis-
50 trator or other person charged with his property.

51 (d) *Individuals under a disability.* — The return for
52 an individual who is unable to make a return by reason
53 of minority or other disability shall be made and filed
54 by his guardian, committee, fiduciary or other person
55 charged with the care of his person or property (other

56 than a receiver in possession of only a part of his
57 property), or by his duly authorized agent.

58 (e) *Estates and trusts.* — The return for an estate or
59 trust shall be made and filed by the fiduciary.

60 (f) *Joint fiduciaries.* — If two or more fiduciaries are
61 acting jointly, the return may be made by any one of
62 them.

63 (g) *Tax a debt.* — Any tax under this article, and any
64 increase, interest or penalty thereon, shall, from the
65 time it is due and payable, be a personal debt of the
66 person liable to pay the same, to the state of West
67 Virginia.

68 (h) *Cross reference.* — For provisions as to information
69 returns by partnerships, employers and other persons,
70 see section fifty-eight.

§11-21-74. Employer's return and payment of withheld taxes.

1 (a) *General.* — Every employer required to deduct
2 and withhold tax under this article shall, for each
3 calendar quarter, on or before the last day of the month
4 following the close of such calendar quarter, file a
5 withholding return as prescribed by the tax commis-
6 sioner and pay over to the tax commissioner the taxes
7 so required to be deducted and withheld. Where the
8 aggregate amount so deducted and withheld by any
9 employer is less than twenty-five dollars in a calendar
10 quarter and the aggregate for the calendar year can
11 reasonably be expected to be less than one hundred
12 dollars, the tax commissioner may by regulation permit
13 an employer to file an annual return and pay over to
14 the tax commissioner the taxes deducted and withheld
15 on or before the last day of the month following the close
16 of such calendar year. The tax commissioner may, if he
17 believes such action necessary for the protection of the
18 revenues, require any employer to make such return and
19 pay to him the tax deducted and withheld at any time,
20 or from time to time.

21 (b) *Monthly returns and payments of withheld tax for*
22 *April and May, 1971.* — Notwithstanding the provisions
23 of subsection (a), in the case of each of the months of

24 April and May, one thousand nine hundred seventy-one,
25 every employer required to deduct and withhold tax
26 under this article, except any employer with respect to
27 whom the tax commissioner may have by regulation
28 provided otherwise in accordance with the provisions of
29 subsection (a), shall, for the months of April and May,
30 one thousand nine hundred seventy-one, file a withhold-
31 ing return for each of such months as prescribed by the
32 tax commissioner and pay over to the tax commissioner
33 the taxes so required to be deducted and withheld for
34 each of such months by the twentieth day of June, one
35 thousand nine hundred seventy-one.

36 (c) *Monthly returns and payments of withheld tax on*
37 *and after June 1, 1971.* — Notwithstanding the provi-
38 sions of subsection (a), on and after June 1, 1971, every
39 employer required to deduct and withhold tax under
40 this article shall, for each of the first eleven months of
41 the calendar year, on or before the twentieth day of the
42 succeeding month and for the last calendar month of the
43 year, on or before the last day of the succeeding month,
44 file a withholding return as prescribed by the tax
45 commissioner and pay over to the tax commissioner the
46 taxes so required to be deducted and withheld, if such
47 withheld taxes aggregate one hundred dollars or more
48 for such month; except any employer with respect to
49 whom the tax commissioner may have by regulation
50 provided otherwise in accordance with the provisions of
51 subsection (a): *Provided,* That in accordance with
52 regulations promulgated by the tax commissioner, a
53 payment of withheld tax may be subject to the credit
54 set forth in section nine-b, article fifteen of this chapter
55 and the credit set forth in section three-b, article fifteen-
56 a of this chapter.

57 (d) *Deposit in trust for tax commissioner.* — Whenever
58 any employer fails to collect, truthfully account for, pay
59 over the tax or make returns of the tax as required in
60 this section, the tax commissioner may serve a notice
61 requiring such employer to collect the taxes which
62 become collectible after service of such notice, to deposit
63 such taxes in a bank approved by the tax commissioner,
64 in a separate account, in trust for and payable to the

65 tax commissioner, and to keep the amount of such tax
66 in such account until payment over to the tax commis-
67 sioner. Such notice shall remain in effect until a notice
68 of cancellation is served by the tax commissioner.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-3. Definitions.

§11-23-7. Persons and organizations exempt from tax.

§11-23-9. Annual returns.

§11-23-13. Declaration and payment of estimated tax.

§11-23-17. Credits against tax.

§11-23-25. Credit for consumers sales and service tax and use tax paid.

§11-23-3. Definitions.

1 (a) *General.* — When used in this article, or in the
2 administration of this article, terms defined in this
3 section shall have the meanings ascribed to them herein
4 unless a different meaning is clearly required by either
5 the context in which the term is used, or by specific
6 definition in this article.

7 (b) *Terms defined.*

8 (1) *Business income.* — The term “business income”
9 means income arising from transactions and activity in
10 the regular course of the taxpayer’s trade or business
11 and includes income from tangible and intangible
12 property if the acquisition, management and disposition
13 of the property constitute integral parts of the taxpay-
14 er’s regular trade or business operations.

15 (2) *Capital.* — The term “capital” of a taxpayer shall
16 mean:

17 (A) In the case of a corporation, the average of the
18 beginning and ending year balances of the sum of the
19 following entries from Schedule L of Federal Form
20 1120, as filed by the taxpayer with the Internal Revenue
21 Service for the taxable year:

22 (i) The value of all common stock and preferred stock
23 of the taxpayer;

24 (ii) The amount of paid-in or capital surplus;

25 (iii) Retained earnings, appropriated and
26 unappropriated;

27 (iv) Less the cost of treasury stock.

28 (B) In the case of a partnership, the average of the
29 beginning and ending year balances of the value of
30 partner's capital accounts from Schedule L of Federal
31 Form 1065, as filed by the taxpayer with the Internal
32 Revenue Service for the taxable year.

33 (C) *Additional items in capital.* — The term "capital"
34 for purposes of this article shall include such additional
35 items from the accounts of the taxpayer as the tax
36 commissioner may by regulation prescribe, which fairly
37 represent the net equity of the taxpayer as defined in
38 accordance with generally accepted accounting
39 principles.

40 (D) Allowance for certain government obligations and
41 obligations secured by residential property. As to both
42 corporations and partnerships, capital shall be multip-
43 lied by a fraction equal to one minus a fraction:

44 (i) The numerator of which is the sum of the average
45 of the monthly beginning and ending account balances
46 during the taxable year (account balances to be deter-
47 mined at cost in the same manner that such obligations,
48 investments and loans are reported on Schedule L of the
49 Federal Form 1120 or Federal Form 1065) of the
50 following:

51 (a) Obligations and securities of the United States, or
52 of any agency, authority, commission or instrumentality
53 of the United States and any other corporation or entity
54 created under the authority of the United States
55 Congress for the purpose of implementing or furthering
56 an objective of national policy;

57 (b) Obligations of this state and any political subdivi-
58 sion of this state;

59 (c) Investments or loans primarily secured by mort-
60 gages, or deeds of trust, on residential property located
61 in this state and occupied by nontransients; and

62 (d) Loans primarily secured by a lien or security
63 agreement on residential property in the form of a

64 mobile home, modular home or double-wide, located in
65 this state and occupied by nontransients.

66 (ii) The denominator of which is the average of the
67 monthly beginning and ending account balances of the
68 total assets of the taxpayer which are shown on Schedule
69 L of the Federal Form 1120, as filed by the taxpayer
70 with the Internal Revenue Service or, in the case of
71 partnerships, Schedule L of Federal Form 1065, as filed
72 by the taxpayer with the Internal Revenue Service.

73 (3) *Commercial domicile.* — The term “commercial
74 domicile” means the principal place from which the
75 trade or business of the taxpayer is directed or
76 managed.

77 (4) *Commissioner or tax commissioner.* — The terms
78 “commissioner” or “tax commissioner” are used inter-
79 changeably herein and mean the tax commissioner of
80 the state of West Virginia, or his delegate.

81 (5) *Compensation.* — The term “compensation” means
82 wages, salaries, commissions and any other form of
83 remuneration paid to employees for personal services.

84 (6) *Corporation.* — The term “corporation” includes
85 any corporation, S corporation, joint-stock company and
86 any association or other organization which is taxable
87 as a corporation under federal income tax laws or the
88 income tax laws of this state.

89 (7) *Delegate.* — The term “delegate” in the phrase “or
90 his delegate,” when used in reference to the tax
91 commissioner, means any officer or employee of the
92 state tax department duly authorized by the tax
93 commissioner directly, or indirectly by one or more
94 redelegations of authority, to perform the functions
95 mentioned or described in this article or regulations
96 promulgated thereunder.

97 (8) *Doing business.* — The term “doing business”
98 means any activity of a corporation or partnership
99 which enjoys the benefits and protection of the govern-
100 ment and laws of this state, except the activity of
101 agriculture and farming, which shall mean the produc-
102 tion of food, fiber and woodland products (but not
103 timbering activity) by means of cultivation, tillage of the

104 soil and by the conduct of animal, livestock, dairy,
105 apiary, equine or poultry husbandry, horticulture, or
106 any other plant or animal production and all farm
107 practices related, usual or incidental thereto, including
108 the storage, packing, shipping and marketing, but not
109 including any manufacturing, milling or processing of
110 such products by persons other than the producer
111 thereof.

112 The activity of agriculture and farming shall mean
113 not less than five acres of land and the improvements
114 thereon, used in the production of the aforementioned
115 activities, and shall mean the production of at least one
116 thousand dollars of products per annum through the
117 conduct of such principal business activities as set forth
118 in section ten, article one-a, chapter eleven of this code.

119 (9) *Domestic corporation.* — The term “domestic
120 corporation” means a corporation organized under the
121 laws of this state, and certain corporations organized
122 under the laws of the state of Virginia before the
123 twentieth day of June, one thousand eight hundred
124 sixty-three. Every other corporation is a foreign
125 corporation.

126 (10) *Federal Form 1120.* — The term “Federal Form
127 1120” means the annual federal income tax return of
128 any corporation made pursuant to the United States
129 Internal Revenue Code of 1986, as amended, or in
130 successor provisions of the laws of the United States, in
131 respect to the federal taxable income of a corporation,
132 and filed with the Federal Internal Revenue Service. In
133 the case of a corporation that elects to file a federal
134 income tax return as part of an affiliated group, but
135 files as a separate corporation under this article, then
136 as to such corporation Federal Form 1120 means its pro
137 forma Federal Form 1120.

138 (11) *Federal Form 1065.* — The term “Federal Form
139 1065” means the annual federal income tax return of a
140 partnership made pursuant to the United States
141 Internal Revenue Code of 1986, as amended, or in
142 successor provisions of the laws of the United States, in

143 respect to the federal taxable income of a partnership,
144 and filed with the Federal Internal Revenue Service.

145 (12) *Fiduciary*. — The term “fiduciary” means, and
146 includes, a guardian, trustee, executor, administrator,
147 receiver, conservator or any person acting in any
148 fiduciary capacity for any person.

149 (13) *Financial organization*. — The term “financial
150 organization” includes any bank, banking association,
151 trust company, industrial loan company, small loan
152 company or licensee, building and loan association,
153 savings and loan association, finance company, invest-
154 ment company, investment broker or dealer, and any
155 other similar business organization at least ninety
156 percent of the assets of which consist of intangible
157 personal property and at least ninety percent of the
158 gross receipts of which consist of dividends, interest and
159 other charges derived from the use of money or credit.

160 (14) *Fiscal year*. — The term “fiscal year” means an
161 accounting period of twelve months ending on any day
162 other than the last day of December, and on the basis
163 of which the taxpayer is required to report for federal
164 income tax purposes.

165 (15) *Includes and including*. — The term “includes”
166 and “including” when used in a definition contained in
167 this article shall not be deemed to exclude other things
168 otherwise within the meaning of the term being defined.

169 (16) *Parent and subsidiary corporations*. — A corpo-
170 ration which owns on average during the taxable year
171 more than fifty percent of the stock of all classes of
172 another corporation is defined to be the “parent
173 corporation” and the corporation which is so owned by
174 the parent is defined to be a “subsidiary corporation.”

175 (17) *Partnership and partner*. — The term “partner-
176 ship” includes a syndicate, group, pool, joint venture or
177 other unincorporated organization through or by means
178 of which any business, financial operation or venture is
179 carried on, and which is not a trust or estate, a
180 corporation or a sole proprietorship. The term “partner”
181 includes a member in such a syndicate, group, pool, joint
182 venture or organization.

183 (18) *Person*. — The term “person” includes any
184 corporation or partnership.

185 (19) *Pro forma return*. — The term “pro forma return”
186 when used in this article means the return which the
187 taxpayer would have filed with the Internal Revenue
188 Service had it not elected to file federally as part of a
189 consolidated group.

190 (20) *Sales*. — The term “sales” means all gross
191 receipts of the taxpayer that are “business income,” as
192 defined in this section.

193 (21) *State*. — The term “state” means a state of the
194 United States, the District of Columbia, the Common-
195 wealth of Puerto Rico, or any territory or possession of
196 the United States.

197 (22) *Stock*. — The term “stock” includes shares in a
198 corporation, association or joint-stock company. It shall
199 not include nonvoting stock which is limited and
200 preferred as to dividends, or treasury stock. “Stock
201 owned by a corporation” shall include stock owned
202 directly by such corporation and stock which is subject
203 to an option to acquire stock.

204 (23) *Taxable year*. — The term “taxable year” means
205 the calendar year, or the fiscal year ending during such
206 calendar year, upon the basis of which tax liability is
207 computed under this article. “Taxable year” means, in
208 case of a return made for a fractional part of a year
209 (short taxable year) under the provisions of this article,
210 or under regulations promulgated by the tax commis-
211 sioner, the period for which such return is made.

212 (24) *Taxable in another state*. — The term “taxable in
213 another state” for purposes of apportionment under this
214 article, means a taxpayer who:

215 (A) Is subject to a net income tax, a franchise tax
216 measured by net income, a franchise tax for the
217 privilege of doing business or a corporate stock tax; or

218 (B) Would be subject to a net income tax if such other
219 state imposed such a tax.

220 (25) *Taxpayer*. — The term “taxpayer” means any

221 person (as defined in this section) subject to the tax
222 imposed by this article.

223 (26) *This code.* — The term “this code” means the code
224 of West Virginia, one thousand nine hundred thirty-one,
225 as amended.

226 (27) *This state.* — The term “this state” means the
227 state of West Virginia.

228 (28) *Treasury stock.* — The term “treasury stock”
229 means shares of a corporation which have been issued
230 and have been subsequently acquired by and belong to
231 such corporation, and have not been canceled or restored
232 to the status of authorized but unissued shares. Treasury
233 stock is deemed to be issued shares, but not outstanding
234 shares.

235 (c) Any term used in this article shall have the same
236 meaning as when used in a comparable context in the
237 laws of the United States relating to federal income
238 taxes, unless a different meaning is clearly required by
239 the context or by definition in this article. Any reference
240 in this article to the laws of the United States, or to the
241 Internal Revenue Code, or to the federal income tax law
242 shall mean the provisions of the laws of the United
243 States as related to the determination of income for
244 federal income tax purposes as in effect on the first day
245 of January, one thousand nine hundred eighty-five.

§11-23-7. Persons and organizations exempt from tax.

1 The following organizations and persons shall be
2 exempt from the tax imposed by this article to the
3 extent provided in this section:

4 (a) Natural persons doing business in this state that
5 are not doing business in the form of a partnership (as
6 defined in section three of this article) or in the form
7 of a corporation (as defined in section three of this
8 article). Such persons include persons doing business as
9 sole proprietors, sole practitioners and other self-
10 employed persons.

11 (b) Corporations and organizations which by reason of
12 their purposes or activities are exempt from federal

13 income tax: *Provided*, That this exemption shall not
14 apply to that portion of their capital (as defined in
15 section three of this article) which is used, directly or
16 indirectly, in the generation of unrelated business
17 income (as defined in the Internal Revenue Code) of any
18 such corporation or organization if the unrelated
19 business income is subject to federal income tax.

20 (c) Insurance companies which pay this state a tax
21 upon premiums.

22 (d) Production credit associations organized under the
23 provisions of the federal "Farm Credit Act of 1933":
24 *Provided*, That this exemption shall not apply to
25 corporations or associations organized under the provi-
26 sions of article four, chapter nineteen of this code.

27 (e) Any trust established pursuant to section one
28 hundred eighty-six, chapter seven, title twenty-nine of
29 the code of the laws of the United States (enacted as
30 section three hundred two (c) of the labor management
31 relations act, one thousand nine hundred forty-seven), as
32 amended prior to the first day of January, one thousand
33 nine hundred eighty-five.

34 (f) Any credit union organized under the provisions of
35 chapter thirty-one, or any other chapter of this code:
36 *Provided*, That this exemption shall not apply to
37 corporations or cooperative associations organized under
38 the provisions of article four, chapter nineteen of this
39 code.

40 (g) Any corporation organized under this code which
41 is a political subdivision of the state of West Virginia,
42 or is an instrumentality of a political subdivision of this
43 state, and was created pursuant to this code.

§11-23-9. Annual returns.

1 (a) *In general*. — Every person subject to the tax
2 imposed by this article shall make and file an annual
3 return for the taxable year with the tax commissioner
4 on or before:

5 (1) The fifteenth day of the third month of the next
6 succeeding taxable year if the person is a corporation;
7 or

8 (2) The fifteenth day of the fourth month of the next
9 succeeding taxable year if the person is a partnership.

10 The annual return shall include such information as
11 the tax commissioner may require for determining the
12 amount of taxes due under this article for the taxable
13 year.

14 (b) *Consolidated returns.* — Any corporation that files
15 as part of an affiliated group for purposes of the tax
16 imposed by article twenty-four of this chapter shall file
17 a consolidated return under this article.

18 (c) The tax commissioner may, at his discretion,
19 require an affiliated group of corporations to file a
20 consolidated tax return under this article in order to
21 accurately determine the taxes due under this article.

§11-23-13. Declaration and payment of estimated tax.

1 (a) *Requirement of declaration.* — Every taxpayer
2 subject to tax under this article shall file a declaration
3 of estimated tax for the taxable year if the taxpayer's
4 liability for tax under this article can reasonably be
5 expected to exceed twelve thousand dollars for the
6 taxable year. A taxpayer not required by this section to
7 file a declaration and pay estimated tax may elect to so
8 file and pay.

9 (b) *Definition of estimated tax.* — The term "estimated
10 tax" means the amount which a taxpayer estimates to
11 be his liability under this article for the taxable year.

12 (c) *Contents of declaration.* — The declaration shall
13 contain such information as the tax commissioner may,
14 by rules or regulations, require, including, but not
15 limited to, such detailed information as may be neces-
16 sary to estimate the taxpayer's liability under section six
17 of this article.

18 (d) *Time for filing declaration.* — A declaration of
19 estimated tax shall be filed on or before the fifteenth day
20 of the fourth month of the taxable year, for any taxable
21 year beginning after the thirtieth day of June, one
22 thousand nine hundred eighty-seven.

23 (e) *Amendment of declaration.* — A taxpayer may
24 amend his declaration at any time during the taxable
25 year in accordance with regulations prescribed by the
26 tax commissioner. If any amendment of a declaration is
27 filed by a taxpayer, the remaining installments, if any,
28 shall be rateably increased or decreased (as the case
29 may be) to reflect any increase or decrease in the
30 estimated tax by reason of such amendment. If any
31 amendment is made after the fifteenth day of the ninth
32 month of the taxable year, any increase in the estimated
33 tax by reason thereof shall be paid at the time of making
34 such amendment.

35 (f) *Payment of estimated tax.* — The estimated tax
36 shall be paid in four equal installments. At the time the
37 declaration of estimated payment is filed, the taxpayer
38 shall pay one fourth of the estimated tax liability for the
39 taxable year. The second, third and fourth installments
40 shall be paid on the following fifteenth day of the sixth,
41 ninth and twelfth months of the taxable year,
42 respectively.

43 (g) *Application to short taxable year.* — This section
44 shall apply to a taxable year of less than twelve months
45 in accordance with regulations of the tax commissioner.

46 (h) *Installment paid in advance.* — Any taxpayer may
47 elect to pay any installment of its estimated tax prior
48 to the date prescribed for its payment.

§11-23-17. Credits against tax.

1 (a) A credit shall be allowed against the tax imposed
2 by this article equal to the amount of franchise tax
3 liability due under this article, (determined before
4 application of credits) multiplied by a fraction, the
5 numerator of which is the gross income of the business
6 subject to tax under article thirteen-a of this chapter
7 and the denominator of which is the total amount of
8 gross income derived by the taxpayer from all activity
9 in West Virginia: *Provided,* That on or after the first
10 day of July, one thousand nine hundred eighty-eight, a
11 credit shall be allowed against the tax imposed by this
12 article equal to the amount of franchise tax liability due
13 under this article, (determined before application of
14 credits) multiplied by a fraction, the numerator of which

15 is the gross income of the business subject to tax under
16 articles thirteen and thirteen-a of this chapter and the
17 denominator of which is the total amount of gross
18 income derived by the taxpayer from all activity in West
19 Virginia.

20 (b) A parent taxpayer who files a separate return
21 under this article shall be allowed a credit against such
22 taxpayer's liability for the tax under this article for the
23 amount of net taxes that would have been paid without
24 regard to the adjustment required by subparagraph (D),
25 paragraph (2), subsection (b), section three of this article
26 for the taxable year by a subsidiary corporation or
27 partnership: *Provided*, That the amount of credit
28 allowed shall not exceed the amount of tax that would
29 have been paid, without regard to such adjustment,
30 under this article by the subsidiary or partnership,
31 multiplied by the percentage of the parent's ownership
32 of the subsidiary corporation or partnership. In the case
33 of corporations, this percentage shall be equal to the
34 percentage of stock of all classes owned by the parent.
35 In no case shall any credit allowable by this section,
36 which is not used on an annual return, be carried
37 forward or back, but instead the same shall be forfeited.

38 (c) A credit shall be allowed against the tax imposed
39 by this article equal to the amount of liability of the
40 taxpayer for the taxable year for the full amount of any
41 tax imposed pursuant to article eight of this chapter on
42 the capital of the business, as determined under sections
43 fourteen and fourteen-a, article three of this chapter.

**§11-23-25. Credit for consumers sales and service tax and
use tax paid.**

1 The tax imposed by this article shall be subject to the
2 credit set forth in section nine-b, article fifteen of this
3 chapter and the credit set forth in section three-b,
4 article fifteen-a of this chapter.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3a. Specific terms defined.

§11-24-6. Adjustments in determining West Virginia taxable income.

§11-24-7. Allocation and apportionment.

§11-24-23. Credit for consumers sales and service tax and use tax paid.

§11-24-3a. Specific terms defined.

1 For purposes of this article:

2 (1) *Business income.* — The term “business income”
3 means income arising from transactions and activity in
4 the regular course of the taxpayer’s trade or business
5 and includes income from tangible and intangible
6 property if the acquisition, management and disposition
7 of the property constitute integral parts of the taxpay-
8 er’s regular trade or business operations.

9 (2) *Commercial domicile.* — The term “commercial
10 domicile” means the principal place from which the
11 trade or business of the taxpayer is directed or
12 managed.

13 (3) *Compensation.* — The term “compensation” means
14 wages, salaries, commissions and any other form of
15 remuneration paid to employees for personal services.

16 (4) *Corporation.* — The term “corporation” includes a
17 joint-stock company and any association or other
18 organization which is taxable as a corporation under the
19 federal income tax law.

20 (5) *Delegate.* — The term “delegate” in the phrase “or
21 his delegate,” when used in reference to the tax
22 commissioner, means any officer or employee of the
23 state tax department duly authorized by the tax
24 commissioner directly, or indirectly by one or more
25 redelegations of authority, to perform the functions
26 mentioned or described in this article or regulations
27 promulgated thereunder.

28 (6) *Domestic corporation.* — The term “domestic
29 corporation” means any corporation organized under the
30 laws of West Virginia and certain corporations organ-
31 ized under the laws of the state of Virginia before the
32 twentieth day of June, one thousand eight hundred
33 sixty-three. Every other corporation is a foreign
34 corporation.

35 (7) *Engaging in business.* — The term “engaging in
36 business” or “doing business” means any activity of a

37 corporation which enjoys the benefits and protection of
38 government and laws in this state.

39 (8) *Federal Form 1120.* — The term “Federal Form
40 1120” means the annual federal income tax return of
41 any corporation made pursuant to the United States
42 Internal Revenue Code of 1986, as amended, or in
43 successor provisions of the laws of the United States, in
44 respect to the federal taxable income of a corporation,
45 and filed with the Federal Internal Revenue Service. In
46 the case of a corporation that elects to file a federal
47 income tax return as part of an affiliated group, but
48 files as a separate corporation under this article, then
49 as to such corporation Federal Form 1120 means its pro
50 forma Federal Form 1120.

51 (9) *Fiduciary.* — The term “fiduciary” means, and
52 includes, a guardian, trustee, executor, administrator,
53 receiver, conservator or any person acting in any
54 fiduciary capacity for any person.

55 (10) *Fiscal year.* — The term “fiscal year” means an
56 accounting period of twelve months ending on any day
57 other than the last day of December, and on the basis
58 of which the taxpayer is required to report for federal
59 income tax purposes.

60 (11) *Includes and including.* — The terms “includes
61 and including” when used in a definition contained in
62 this article shall not be deemed to exclude other things
63 otherwise within the meaning of the term being defined.

64 (12) *Nonbusiness income.* — The term “nonbusiness
65 income” means all income other than business income.

66 (13) *Person.* — The term “person” is to be deemed
67 interchangeable with the term “corporation” in this
68 section.

69 (14) *Pro forma return.* — The term “pro forma return”
70 when used in this article means the return which the
71 taxpayer would have filed with the Internal Revenue
72 Service had it not elected to file federally as part of an
73 affiliated group.

74 (15) *Public utility.* — The term “public utility” means

75 any business activity to which the jurisdiction of the
76 public service commission of West Virginia extends
77 under section one, article two, chapter twenty-four of the
78 code of West Virginia.

79 (16) *Sales*. — The term “sales” means all gross
80 receipts of the taxpayer that are “business income,” as
81 defined in this section.

82 (17) *State*. — The term “state” means any state of the
83 United States, the District of Columbia, the Common-
84 wealth of Puerto Rico, any territory or possession of the
85 United States, and any foreign country or political
86 subdivision thereof.

87 (18) *Taxable year*. — The term “taxable year” means
88 the taxable year for which the taxable income of the
89 taxpayer is computed under the federal income tax law.

90 (19) *Tax*. — The term “tax” includes, within its
91 meaning, interest and additions to tax, unless the
92 intention to give it a more limited meaning is disclosed
93 by the context.

94 (20) *Tax commissioner*. — The term “tax commis-
95 sioner” means the tax commissioner of the state of West
96 Virginia or his delegate.

97 (21) *Taxpayer*. — The term “taxpayer” means a
98 corporation subject to the tax imposed by this article.

99 (22) *This code*. — The term “this code” means the code
100 of West Virginia, one thousand nine hundred thirty-one,
101 as amended.

102 (23) *This state*. — The term “this state” means the
103 state of West Virginia.

104 (24) *West Virginia taxable income*. — The term “West
105 Virginia taxable income” means the taxable income of
106 a corporation as defined by the laws of the United States
107 for federal income tax purposes, adjusted, as provided
108 in section six of this article: *Provided*, That in the case
109 of a corporation having income from business activity
110 which is taxable without this state, its “West Virginia
111 taxable income” shall be such portion of its taxable
112 income as so defined and adjusted as is allocated or

113 apportioned to this state under the provisions of section
114 seven of this article.

***§11-24-6. Adjustments in determining West Virginia taxable income.**

1 (a) *General.* — In determining West Virginia taxable
2 income of a corporation, its taxable income as defined
3 for federal income tax purposes shall be adjusted and
4 determined before the apportionment provided by
5 section seven of this article, by the items specified in this
6 section.

7 (b) *Adjustments increasing federal taxable income.* —
8 There shall be added to federal taxable income, unless
9 already included in the computation of federal taxable
10 income, the following items except that adjustment (5)
11 shall be required only with respect to tax periods ending
12 after the thirty-first day of December, one thousand nine
13 hundred eighty-one:

14 (1) Interest or dividends on obligations or securities of
15 any state or of a political subdivision or authority
16 thereof;

17 (2) Interest or dividend income on obligations or
18 securities of any authority, commission or instrumental-
19 ity of the United States which the laws of the United
20 States exempt from federal income tax but not from
21 state income taxes;

22 (3) Income taxes imposed by this state or any other
23 taxing jurisdiction, to the extent deductible in determin-
24 ing federal taxable income and not credited against
25 federal income tax, and the taxes imposed by this state
26 for which credit against the taxes imposed by section
27 four is allowed by section nine; and

28 (4) The deferral value of certain income that is not
29 recognized for federal tax purposes, which value shall
30 be an amount equal to a percentage of the amount
31 allowed as a deduction in determining federal taxable
32 income pursuant to the accelerated cost recovery system
33 under section 168 of the Internal Revenue Code for the
34 federal taxable year, with the percentage of the federal
35 deduction to be added as follows with respect to the

* Clerk's Note: This section was also amended by S. B. 760, which passed subsequent to this act.

36 following recovery property: three-year property—no
37 modifications; five-year property—ten percent; ten-
38 year property—fifteen percent; fifteen-year public
39 utility property—twenty-five percent; and fifteen-year
40 or eighteen-year real property—thirty-five percent:
41 *Provided*, That this modification shall not apply to any
42 person whose federal deduction is determined by the use
43 of the straight line method, or to any taxable year
44 beginning after the thirtieth day of June, one thousand
45 nine hundred eighty-seven.

46 (c) *Adjustments decreasing federal taxable income.* —
47 There shall be subtracted from federal taxable income:

48 (1) Any gain from the sale or other disposition of
49 property having a higher fair market value on the first
50 day of July, one thousand nine hundred sixty-seven, than
51 the adjusted basis at said date for federal income tax
52 purposes: *Provided*, That the amount of this adjustment
53 is limited to that portion of any such gain which does
54 not exceed the difference between such fair market
55 value and such adjusted basis;

56 (2) The amount of any refund or credit for overpay-
57 ment of income taxes imposed by this state or any other
58 taxing jurisdiction, to the extent properly included in
59 gross income for federal income tax purposes;

60 (3) The amount of dividends received, to the extent
61 included in federal taxable income: *Provided*, That this
62 modification shall not be made for taxable years
63 beginning after the thirtieth day of June, one thousand
64 nine hundred eighty-seven;

65 (4) Thirty-seven and one-half percent of the excess of
66 net long-term capital gain over net short-term capital
67 loss as defined in the laws of the United States:
68 *Provided*, That this modification shall not be made for
69 taxable years beginning after the thirtieth day of June,
70 one thousand nine hundred eighty-seven;

71 (5) The amount added to federal taxable income due
72 to the elimination of the reserve method for computation
73 of the bad debt deduction; and

74 (6) The full amount of interest expense actually

75 disallowed in determining federal taxable income which
76 was incurred or continued to purchase or carry obliga-
77 tions or securities of any state or of any political
78 subdivision thereof.

79 (d) *Adjustment resulting from recomputation of net*
80 *operating loss deduction.* — In determining the West
81 Virginia taxable income of a corporation entitled to a
82 net operating loss deduction for the taxable year for
83 federal income tax purposes, there shall be added to or
84 subtracted from the federal taxable income the amount
85 of an adjustment reflecting a recomputation of such net
86 operating loss deduction in which the adjustments
87 required by subsections (b) and (c) are made for each
88 taxable year involved in the computation of such net
89 operating loss deduction.

90 (e) *Special adjustments for expenditures for water and*
91 *air pollution control facilities.*

92 (1) If the taxpayer so elects under subdivision (2) of
93 this subsection, there shall be:

94 (A) Subtracted from federal taxable income the total
95 of the amounts paid or incurred during the taxable year
96 for the acquisition, construction or development within
97 this state of water pollution control facilities and air
98 pollution control facilities as defined in section 48 (h)
99 (12) (B) and (C) of the Internal Revenue Code, and

100 (B) Added to federal taxable income the total of the
101 amounts of any allowances for depreciation and amor-
102 tization of such water pollution control facilities and air
103 pollution control facilities, as so defined, to the extent
104 deductible in determining federal taxable income.

105 (2) The election referred to in subdivision (1) of this
106 subsection shall be made in the return filed within the
107 time prescribed by law (including extensions thereof)
108 for the taxable year in which such amounts were paid
109 or incurred. Such election shall be made in such
110 manner, and the scope of application of such election
111 shall be defined, as the tax commissioner may by
112 regulations prescribe, and shall be irrevocable when
113 made as to all amounts paid or incurred for any

114 particular water pollution control facility or air
115 pollution control facility.

116 (3) Notwithstanding any other provisions of this
117 subsection or of section seven to the contrary, if the
118 taxpayer's federal taxable income is subject to allocation
119 and apportionment under section seven, the adjustments
120 prescribed in paragraphs (A) and (B), subdivision (1) of
121 this subsection shall (instead of being made to the
122 taxpayer's federal taxable income before allocation and
123 apportionment thereof as provided in section seven) be
124 made to the portion of the taxpayer's net income,
125 computed without regard to such adjustments, allocated
126 and apportioned to this state in accordance with the
127 amounts of any allowances for depreciation and amor-
128 tization of such water pollution control facilities and air
129 pollution control facilities, as so defined, to the extent
130 deductible in determining federal taxable income.

131 (f) *Allowance for certain government obligations and*
132 *obligations secured by residential property.* — The West
133 Virginia taxable income of a taxpayer subject to this
134 article as adjusted in accordance with parts (b), (c), (d)
135 and (e) of this section shall be further adjusted by
136 multiplying such taxable income after such adjustment
137 by parts (b), (c), (d) and (e) by a fraction equal to one
138 minus a fraction:

139 (1) The numerator of which is the sum of the average
140 of the monthly beginning and ending account balances
141 during the taxable year (account balances to be deter-
142 mined at cost in the same manner that such obligations,
143 investments and loans are reported on Schedule L of the
144 Federal Form 1120) of the following:

145 (A) Obligations or securities of the United States, or
146 of any agency, authority, commission or instrumentality
147 of the United States and any other corporation or entity
148 created under the authority of the United States
149 Congress for the purpose of implementing or furthering
150 an objective of national policy, which is specifically
151 made exempt from state taxes by federal law;

152 (B) Obligations or securities of this state and any
153 political subdivision or authority thereof;

154 (C) Investments or loans primarily secured by mort-
155 gages, or deeds of trust, on residential property located
156 in this state and occupied by nontransients; and

157 (D) Loans primarily secured by a lien or security
158 agreement on residential property in the form of a
159 mobile home, modular home or double-wide, located in
160 this state and occupied by nontransients.

161 (2) The denominator of which is the average of the
162 monthly beginning and ending account balances of the
163 total assets of the taxpayer which are shown on Schedule
164 L of Federal Form 1120, which are filed by the taxpayer
165 with the Internal Revenue Service.

§11-24-7. Allocation and apportionment.

1 (a) *General.* — Any taxpayer having income from
2 business activity which is taxable both in this state and
3 in another state shall allocate and apportion its net
4 income as provided in this section. For purposes of this
5 section, the term “net income” means the taxpayer’s
6 federal taxable income adjusted as provided in section
7 six.

8 (b) *“Taxable in another state” defined.* — For purposes
9 of allocation and apportionment of net income under this
10 section, a taxpayer is taxable in another state if:

11 (1) In that state the taxpayer is subject to a net
12 income tax, a franchise tax measured by net income, a
13 franchise tax for the privilege of doing business, or a
14 corporation stock tax, or

15 (2) That state has jurisdiction to subject the taxpayer
16 to a net income tax, regardless of whether, in fact, that
17 state does or does not subject the taxpayer to such tax.

18 (c) *Business activities entirely within West Virginia.*
19 — If the business activities of a taxpayer take place
20 entirely within this state, and if such taxpayer is not
21 taxable in another state, the entire net income of such
22 taxpayer is subject to the tax imposed by this article.

23 (d) *Business activities partially within and partially*
24 *without West Virginia; allocation of nonbusiness income.*
25 — If the business activities of a taxpayer take place

26 partially within and partially without this state and
27 such taxpayer is also taxable in another state, rents and
28 royalties from real or tangible personal property, capital
29 gains, interest, dividends or patent or copyright
30 royalties, to the extent that they constitute nonbusiness
31 income of the taxpayer, shall be allocated as provided
32 in subdivisions (1) through (4).

33 (1) *Net rents and royalties.*

34 (A) Net rents and royalties from real property located
35 in this state are allocable to this state.

36 (B) Net rents and royalties from tangible personal
37 property are allocable to this state:

38 (i) If and to the extent that the property is utilized in
39 this state, or

40 (ii) In their entirety if the taxpayer's commercial
41 domicile is in this state and the taxpayer is not
42 organized under the laws of or taxable in the state in
43 which the property is utilized.

44 (C) The extent of utilization of tangible personal
45 property in a state is determined by multiplying the
46 rents and royalties by a fraction, the numerator of which
47 is the number of days of physical location of the property
48 in the state during the rental or royalty period in the
49 taxable year and the denominator of which is the
50 number of days of physical location of the property
51 everywhere during all rental or royalty periods in the
52 taxable year. If the physical location of the property
53 during the rental or royalty period is unknown or
54 unascertainable by the taxpayer, tangible personal
55 property is utilized in the state in which the property
56 was located at the time the rental or royalty payer
57 obtained possession.

58 (2) *Capital gains.*

59 (A) Capital gains and losses from sales of real
60 property located in this state are allocable to this state.

61 (B) Capital gains and losses from sales of tangible
62 personal property are allocable to this state if:

63 (i) The property had a situs in this state at the time
64 of the sale, or

65 (ii) The taxpayer's commercial domicile is in this state
66 and the taxpayer is not taxable in the state in which the
67 property had a situs.

68 (C) Capital gains and losses from sales of intangible
69 personal property are allocable to this state if the
70 taxpayer's commercial domicile is in this state.

71 (D) Gains pursuant to section 631 (a) and (b) of the
72 Internal Revenue Code of 1986, as amended, shall be
73 considered business income for purposes of this article.

74 (3) *Interest and dividends are allocable to this state if*
75 *the taxpayer's commercial domicile is in this state.*

76 (4) *Patent and copyright royalties.*

77 (A) Patent and copyright royalties are allocable to
78 this state:

79 (i) If and to the extent that the patent or copyright
80 is utilized by the payer in this state; or

81 (ii) If and to the extent that the patent or copyright
82 is utilized by the payer in a state in which the taxpayer
83 is not taxable and the taxpayer's commercial domicile
84 is in this state.

85 (B) A patent is utilized in a state to the extent that
86 it is employed in production, fabrication, manufacturing
87 or other processing in the state or to the extent that a
88 patented product is produced in the state. If the basis
89 of receipts from patent royalties does not permit
90 allocation to states or if the accounting procedures do
91 not reflect states of utilization, the patent is utilized in
92 the state in which the taxpayer's commercial domicile
93 is located.

94 (C) A copyright is utilized in a state to the extent that
95 printing or other publication originates in the state. If
96 the basis of receipts from copyright royalties does not
97 permit allocation to states or if the accounting proce-
98 dures do not reflect states of utilization, the copyright

99 is utilized in the state in which the taxpayer's commer-
100 cial domicile is located.

101 (e) *Business activities partially within and partially*
102 *without this state; apportionment of business income.* —
103 All net income, after deducting those items specifically
104 allocated under subsection (d), shall be apportioned to
105 this state by multiplying such net income by a fraction,
106 the numerator of which is the property factor plus the
107 payroll factor plus two times the sales factor, and the
108 denominator of which is four.

109 (1) *Property factor.* — The property factor is a
110 fraction, the numerator of which is the average value
111 of the taxpayer's real and tangible personal property
112 owned or rented and used by it in this state during the
113 taxable year and the denominator of which is the
114 average value of all the taxpayer's real and tangible
115 personal property owned or rented and used by the
116 taxpayer during the taxable year, which is reported on
117 Schedule L Federal Form 1120, plus the average value
118 of all real and tangible personal property leased and
119 used by the taxpayer during the taxable year.

120 (2) *Value of property.* — Property owned by the
121 taxpayer shall be valued at its original cost, adjusted by
122 subsequent capital additions or improvements thereto
123 and partial disposition thereof, by reason of sale,
124 exchange, abandonment, etc.: *Provided*, That where
125 records of original cost are unavailable or cannot be
126 obtained without unreasonable expense, property shall
127 be valued at original cost as determined under regula-
128 tions of the tax commissioner. Property rented by the
129 taxpayer from others shall be valued at eight times the
130 annual rental rate. The term "net annual rental rate"
131 is the annual rental paid, directly or indirectly, by the
132 taxpayer, or for its benefit, in money or other consid-
133 eration for the use of property and includes:

134 (A) Any amount payable for the use of real or tangible
135 personal property, or any part thereof, whether desig-
136 nated as a fixed sum of money or as a percentage of
137 sales, profits or otherwise.

138 (B) Any amount payable as additional rent or in lieu

139 of rents, such as interest, taxes, insurance, repairs or
140 any other items which are required to be paid by the
141 terms of the lease or other arrangement, not including
142 amounts paid as service charges, such as utilities,
143 janitor services, etc. If a payment includes rent and
144 other charges unsegregated, the amount of rent shall be
145 determined by consideration of the relative values of the
146 rent and the other items.

147 (3) *Leasehold improvements.* — Leasehold improve-
148 ments shall, for purposes of the property factor, be
149 treated as property owned by the taxpayer regardless
150 of whether the taxpayer is entitled to remove the
151 improvements or the improvements revert to the lessor
152 upon expiration of the lease. Leasehold improvements
153 shall be included in the property factor at their original
154 cost.

155 (4) *Average value of property.* — The average value of
156 property shall be determined by averaging the values
157 at the beginning and ending of the taxable year:
158 *Provided,* That the tax commissioner may require the
159 averaging of monthly values during the taxable year if
160 substantial fluctuations in the values of the property
161 exist during the taxable year, or where property is
162 acquired after the beginning of the taxable year, or is
163 disposed of, or whose rental contract ceases, before the
164 end of the taxable year.

165 (5) *Payroll factor.* — The payroll factor is a fraction,
166 the numerator of which is the total compensation paid
167 in this state during the taxable year by the taxpayer for
168 compensation, and the denominator of which is the total
169 compensation paid by the taxpayer during the taxable
170 year, as shown on the taxpayer's federal income tax
171 return as filed with the Internal Revenue Service, as
172 reflected in the schedule of wages and salaries and that
173 portion of cost of goods sold which reflects compensa-
174 tion, or as shown on a pro forma return.

175 (6) *Compensation.* — The term "compensation" means
176 wages, salaries, commissions and any other form of
177 remuneration paid to employees for personal services.
178 Payments made to an independent contractor or to any

179 other person not properly classifiable as an employee
180 shall be excluded. Only amounts paid directly to
181 employees are included in the payroll factor. Amounts
182 considered as paid directly to employees include the
183 value of board, rent, housing, lodging and other benefits
184 or services furnished to employees by the taxpayer in
185 return for personal services, provided such amounts
186 constitute income to the recipient for federal income tax
187 purposes.

188 (7) *Employee.* — The term “employee” means:

189 (A) Any officer of a corporation; or

190 (B) Any individual who, under the usual common-law
191 rule applicable in determining the employer-employee
192 relationship, has the status of an employee.

193 (8) *Compensation.* — Compensation is paid in this
194 state if:

195 (A) The employee’s service is performed entirely
196 within this state; or

197 (B) The employee’s service is performed both within
198 and without this state, but the service performed
199 without the state is incidental to the individual’s service
200 within this state. The word “incidental” means any
201 service which is temporary or transitory in nature, or
202 which is rendered in connection with an isolated
203 transaction; or

204 (C) Some of the service is performed in this state and

205 (i) The employee’s base of operations or, if there is no
206 base of operations, the place from which the service is
207 directed or controlled is in the state, or

208 (ii) The base of operations or the place from which the
209 service is directed or controlled is not in any state in
210 which some part of the service is performed, but the
211 employee’s residence is in this state.

212 The term “base of operations” is the place of more or
213 less permanent nature from which the employee starts
214 his work and to which he customarily returns in order
215 to receive instructions from the taxpayer or communi-

216 cations from his customers or other persons or to
217 replenish stock or other materials, repair equipment, or
218 perform any other functions necessary to the exercise of
219 his trade or profession at some other point or points. The
220 term "place from which the service is directed or
221 controlled" refers to the place from which the power to
222 direct or control is exercised by the taxpayer.

223 (9) *Sales factor.* — The sales factor is a fraction, the
224 numerator of which is the gross receipts of the taxpayer
225 derived from transactions and activity in the regular
226 course of its trade or business in this state during the
227 taxable year, less returns and allowances. The denom-
228 inator of the fraction shall be the total gross receipts
229 derived by the taxpayer from transactions and activity
230 in the regular course of its trade or business, and
231 reflected in its gross income reported and as appearing
232 on the taxpayer's Federal Form 1120, and consisting of
233 those certain pertinent portions of the (gross income)
234 elements set forth.

235 (10) *Allocation of sales of tangible personal property.*
236 — Sales of tangible personal property are in this state
237 if:

238 (A) The property is delivered or shipped to a pur-
239 chaser, other than the United States government, within
240 this state regardless of the f.o.b. point or other condi-
241 tions of the sale; or

242 (B) The property is shipped from an office, store,
243 warehouse, factory or other place of storage in this state
244 and

245 (i) The purchaser is the United States government; or

246 (ii) The taxpayer is not taxable in the state of the
247 purchaser.

248 (11) *Allocation of other sales.* — Sales, other than sales
249 of tangible personal property are in this state if:

250 (A) The income-producing activity is performed in
251 this state; or

252 (B) The income-producing activity is performed both
253 in and outside this state and a greater proportion of the

254 income-producing activity is performed in this state
255 than in any other state, based on costs of performance.

256 (f) *Income-producing activity*. — The term “income-
257 producing activity” applies to each separate item of
258 income and means the transactions and activity directly
259 engaged in by the taxpayer in the regular course of its
260 trade or business for the ultimate purpose of obtaining
261 gain or profit. Such activity does not include transac-
262 tions and activities performed on behalf of the taxpayer,
263 such as those conducted on its behalf by an independent
264 contractor. “Income-producing activity” includes, but is
265 not limited to, the following:

266 (1) The rendering of personal services by employees
267 with utilization of tangible and intangible property by
268 the taxpayer in performing a service;

269 (2) The sale, rental, leasing, licensing or other use of
270 real property;

271 (3) The sale, rental, leasing, licensing or other use of
272 tangible personal property; or

273 (4) The sale, licensing or other use of intangible
274 personal property.

275 The mere holding of intangible personal property is
276 not, in itself, an income-producing activity.

277 (g) *Cost of performance*. — The term “cost of perfor-
278 mance” means direct costs determined in a manner
279 consistent with generally accepted accounting principles
280 and in accordance with accepted conditions or practices
281 in the trade or business of the taxpayer.

282 (h) Other methods of allocation and apportionment.

283 (1) *General*. — If the allocation and apportionment
284 provisions of subsections (d) and (e) of this section do not
285 fairly represent the extent of the taxpayer’s business
286 activities in this state, the taxpayer may petition for or
287 the tax commissioner may require, in respect to all or
288 any part of the taxpayer’s business activities, if
289 reasonable:

290 (A) Separate accounting;

291 (B) The exclusion of one or more of the factors;

292 (C) The inclusion of one or more additional factors
293 which will fairly represent the taxpayer's business
294 activity in this state; or

295 (D) The employment of any other method to effectuate
296 an equitable allocation or apportionment of the taxpay-
297 er's income.

298 (2) *Alternative method for public utilities.* — If the
299 taxpayer is a public utility and if the allocation and
300 apportionment provisions of subsections (d) and (e) do
301 not fairly represent the taxpayer's business activities in
302 this state, the taxpayer may petition for, or the tax
303 commissioner may require, as an alternative to the other
304 methods provided for in subdivision (1) of this subsec-
305 tion, the allocation and apportionment of the taxpayer's
306 net income in accordance with any system of accounts
307 prescribed by the public service commission of this state
308 pursuant to the provisions of section eight, article two,
309 chapter twenty-four of this code, provided the allocation
310 and apportionment provisions of such system of accounts
311 fairly represent the extent of the taxpayer's business
312 activities in this state for the purposes of the tax
313 imposed by this article.

314 (3) *Burden of proof.* — In any proceeding before the
315 tax commissioner or in any court in which employment
316 of one of the methods of allocation or apportionment
317 provided for in subdivision (1) or (2) of this subsection
318 is sought, on the ground that the allocation and
319 apportionment provisions of subsections (d) and (e) do
320 not fairly represent the extent of the taxpayer's business
321 activities in this state, the burden of proof shall:

322 (A) If the tax commissioner seeks employment of one
323 of such methods, be on the tax commissioner, or

324 (B) If the taxpayer seeks employment of one of such
325 other methods, be on the taxpayer.

**§11-24-23. Credit for consumers sales and service tax and
use tax paid.**

1 The tax imposed by this article shall be subject to the

- 2 credit set forth in section nine-b, article fifteen of this
3 chapter, and the credit set forth in section three-b,
4 article fifteen-a of this chapter.

CHAPTER 132

(H. B. 2274—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

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

AN ACT to amend article two, chapter five-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two; to amend and reenact sections three, four, four-b, five and seven, article thirteen-c, chapter eleven of said code; to further amend said article thirteen-c by adding thereto a new section, designated section seven-a; to amend and reenact section eight, article thirteen-d of said chapter eleven; to further amend said article thirteen-d by adding thereto a new section, designated section three-a; and to amend article thirteen-e of said chapter eleven by adding thereto a new section, designated section three-a, all relating generally to exemptions from and credits against taxes assessed or collected pursuant to the provisions of chapter eleven of the code of West Virginia, which exemptions and credits are provided for purposes of and to stimulate economic development in this state; exempting the West Virginia industrial trade jobs and development corporation from payment of ad valorem property taxes on its real and personal property; providing for proration of such taxes and exemption when property is purchased or sold by the corporation; amending the business investment and jobs expansion tax credit by amending the definition of certain terms used therein, including: "business," "business facility," "eligible taxpayer," "new business facility," "new property," "property purchased or leased for business expansion," "purchase," "qualified activity" and "taxpayer"; providing for election to delay start of ten-year credit period to be made in the annual income tax return filed for the taxable year in which the business

investment and jobs expansion tax credit is first taken for the qualified investment; requiring that an application for project certification be filed with and approved by the tax commissioner prior to any credit being claimed or allowed for the project's qualified investment and new jobs created as a direct result of the investment; specifying that for purposes of determining the amount of taxes against which the business investment and jobs expansion tax credit may be taken by a participant in a project, project participants must apportion their liability for such taxes by a payroll factor, the numerator of which is total compensation paid in this state during the taxable year by all project participants to all new employees filling the new jobs created, and the denominator of which is the total compensation paid in this state during the taxable year by all project participants to their employees in this state; authorizing certification of a project having qualified investment of at least fifty million dollars placed in service or use between the first day of March, one thousand nine hundred eighty-five and the first day of February, one thousand nine hundred eighty-six, where the application for certification of such project was filed with the tax commissioner prior to the thirty-first day of December, one thousand nine hundred eighty-six; allowing the business investment and jobs expansion tax credit to be applied against sales and use taxes paid on purchases of tangible personal property and taxable services made on or after the first day of July, one thousand nine hundred eighty-seven, when such property or services will be directly used or consumed in the qualified investment activity; providing for the rebate amount of credit allowed for payment of unemployment taxes and workers' compensation premiums with respect to the new employees filling the new jobs directly attributable to the qualified investment to be determined based on the actual expenditure for such purposes rather than applying the payroll factor to total unemployment taxes and workers' compensation premiums paid; providing for redetermination of the new jobs percentage to be made with the annual income tax return instead of the business and occupation tax or

carrier income tax return filed for the third taxable year for which the qualified investment is in service or use; creating a business investment and jobs expansion tax credit for small businesses whose qualified investment directly results in the creation of at least ten new jobs and as to such credit; defining the term "small business" and other terms; providing for computation and allowance of small business tax credits; providing for annual adjustment of the new jobs percentage; allowing certain small business projects to qualify for credit; authorizing tax commissioner to prescribe such regulations as he deems necessary to administer the small business tax credit; providing for the small business tax credit to be allowed for qualified investment property purchased or leased by a small business after the thirtieth day of June, one thousand nine hundred eighty-seven that creates at least ten new jobs; providing for the business and occupation tax credit for industrial expansion and revitalization for research and development projects to also apply against sales and use taxes paid on purchases directly used or consumed in taxpayer's qualified investment activity when the property or service is purchased after the thirtieth day of June, one thousand nine hundred eighty-seven; clarifying that the industrial expansion credit which was repealed, effective the first day of March, one thousand nine hundred eighty-five, and recodified as of such date as part of the industrial revitalization credit is fully and completely preserved under provisions of the recodified law for the remainder of ten-year credit period that was in existence for any particular taxpayer under the business and occupation tax credit for industrial expansion law prior to its repeal; providing for the business and occupation tax credit for coal loading facilities to be applied against sales and use taxes paid on purchases of tangible personal property and taxable services that are directly used or consumed in taxpayer's qualified investment activity when such purchases are made after the thirtieth day of June, one thousand nine hundred eighty-seven; and generally specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5C. Basic Assistance for Industry and Trade.

11. Taxation.

CHAPTER 5C. BASIC ASSISTANCE FOR INDUSTRY AND TRADE.

ARTICLE 2. WEST VIRGINIA INDUSTRIAL AND TRADE JOBS DEVELOPMENT CORPORATION.

§5C-2-22. Exemption from taxation.

1 The corporation, being a political subdivision of this
2 state, is exempt from taxation; and the real and personal
3 property which the corporation may acquire to be
4 leased, sold or otherwise disposed of, according to the
5 provisions of this article, is exempt from taxation,
6 whether by the state, or any county, municipality, or
7 other levying body, as public property, so long as the
8 same is owned by corporation: *Provided*, That where
9 title to real property is transferred after the assessment
10 day, the amount of ad valorem property taxes that
11 become due and payable subsequent to the date title is
12 transferred shall be prorated between the transferee
13 and the transferor. Where the transferor is a taxable
14 person, the transferor's liability for such ad valorem
15 property taxes shall be limited to that portion apporti-
16 oned to the transferor based on the number of months

17 during the tax year to which the levy relates that the
 18 transferor had legal title to the property; and the
 19 corporation being the transferee shall be exempt from
 20 payment of the ad valorem property taxes apportioned
 21 to the months of the tax year during which it had title
 22 to the property. Where the transferor is the corporation
 23 and the transferee is one not exempt from payment of
 24 ad valorem property taxes, the amount of such taxes
 25 would become due and payable subsequent to the date
 26 title is transferred to the transferee but for the owner
 27 of record on the assessment day being a tax exempt
 28 entity, shall nevertheless be determined by extension of
 29 the applicable levy rates and be extended prorated
 30 between the transferor and transferee based upon the
 31 number of months during the tax year for which the
 32 taxes are levied which each respectively have title to the
 33 property, and the transferee shall be liable for payment
 34 of ad valorem property taxes prorated to the period of
 35 time after it acquired title to the property, but the
 36 transferor shall not.

CHAPTER 11. TAXATION.

Article

13C. Business Investment and Jobs Expansion Credit.

13D. Business and Occupation Tax Credit for Industrial Expansion
and Revitalization and for Research and Development
Projects.

13E. Business and Occupation Tax Credit for Coal Loading Facilities.

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION CREDIT.

§11-13C-3. Definitions.

§11-13C-4. Amount of credit allowed.

§11-13C-4b. Credit allowable for certified projects.

§11-13C-5. Application of annual credit allowance.

§11-13C-7. New jobs percentage.

§11-13C-7a. Small business credit.

§11-13C-3. Definitions.

1 (a) *General.* — When used in this article, or in the
 2 administration of this article, terms defined in subsec-
 3 tion (b) shall have the meanings ascribed to them by this
 4 section, unless a different meaning is clearly required
 5 by either the context in which the term is used, or by
 6 specific definition, in this article.

7 (b) *Terms defined.*

8 (1) *Business.* — The term “business” means any
9 activity taxable under article twelve-a or thirteen (or
10 both) of this chapter, which is engaged in by any person
11 in this state: *Provided*, That on and after the first day
12 of July, one thousand nine hundred eighty-seven, the
13 phrase “taxes imposed by article twelve-a or thirteen,
14 (or both) of this chapter” shall mean “taxes imposed by
15 article thirteen, thirteen-a, thirteen-b, twenty-one,
16 twenty-three and twenty-four of this chapter (or any one
17 or combination of such articles of this chapter).”

18 (2) *Business expansion.* — The term “business expansion” means capital investment in a new or expanded
19 business facility in this state.
20

21 (3) *Business facility.* — The term “business facility”
22 means any factory, mining operation, mill, plant,
23 refinery, warehouse, building or complex of buildings
24 located within this state, including the land on which it
25 is located, and all machinery, equipment and other real
26 and personal property located at or within such facility,
27 used in connection with the operation of such facility,
28 in a business that is taxable in this state, and all site
29 preparation and start-up costs of the taxpayer for the
30 business facility which it capitalizes for federal income
31 tax purposes.

32 (A) “Mining operation” means the place at which a
33 person extracts ores or minerals from the ground. It
34 includes both surface and underground mining
35 operations.

36 (B) “Surface mine” means the surface of land upon
37 which activities are conducted which disturb the natural
38 surface of the land and result in the production of ores
39 or minerals.

40 (C) “Underground mine” means the surface effects
41 associated with the shafts, slopes, lifts or inclines
42 connected with excavations penetrating seams or strata
43 of minerals, and the equipment connected therewith
44 which contribute to the mining, preparation or handling
45 of ores or minerals.

46 (4) *Commissioner or tax commissioner.* — The terms
47 “commissioner” and “tax commissioner” are used
48 interchangeably herein and mean the tax commissioner
49 of the state of West Virginia, or his delegate.

50 (5) *Compensation.* — The term “compensation” means
51 wages, salaries, commissions and any other form of
52 remuneration paid to employees for personal services.

53 (6) *Controlled group.* — The term “controlled group”
54 means one or more chains of corporations connected
55 through stock ownership with a common parent corpo-
56 ration if stock possessing at least fifty percent of the
57 voting power of all classes of stock of each of the
58 corporations is owned directly or indirectly by one or
59 more of the corporations; and the common parent owns
60 directly stock possessing at least fifty percent of the
61 voting power of all classes of stock of at least one of the
62 other corporations.

63 (7) *Corporation.* — The term “corporation” means any
64 corporation, joint-stock company or association, and any
65 business conducted by a trustee or trustees wherein
66 interest or ownership is evidenced by a certificate of
67 interest or ownership or similar written instrument.

68 (8) *Delegate.* — The term “delegate” in the phrase “or
69 his delegate,” when used in reference to the tax
70 commissioner, means any officer or employee of the
71 state tax department duly authorized by the tax
72 commissioner directly, or indirectly by one or more
73 redelegations of authority, to perform the functions
74 mentioned or described in this article.

75 (9) *Eligible taxpayer.* — The term “eligible taxpayer”
76 means any person subject to the taxes imposed by article
77 twelve-a or thirteen (or both) of this chapter who makes
78 qualified investment in a new or expanded business
79 facility located in this state that results in the creation
80 of at least fifty new jobs: *Provided,* That on and after
81 the first day of July, one thousand nine hundred eighty-
82 seven, the phrase “taxes imposed by article twelve-a or
83 thirteen, (or both) of this chapter” shall mean “taxes
84 imposed by articles thirteen, thirteen-a, thirteen-b,
85 twenty-one, twenty-three and twenty-four of this chapter

86 (or any one or combination of such articles of this
87 chapter)." "Eligible taxpayer" shall also include an
88 affiliated group of taxpayers if such group elects to file
89 a consolidated corporation net income tax return under
90 article twenty-four of this chapter.

91 (10) *Expanded facility.* — The term "expanded
92 facility" means any business facility (other than a new
93 or replacement business facility) resulting from the
94 acquisition, construction, reconstruction, installation or
95 erection of improvements or additions to existing
96 property if such improvements or additions are pur-
97 chased on or after the first day of March, one thousand
98 nine hundred eighty-five, but only to the extent of the
99 taxpayer's qualified investment in such improvements
100 or additions.

101 (11) *Includes and including.* — The terms "includes"
102 and "including," when used in a definition contained in
103 this article, shall not be deemed to exclude other things
104 otherwise within the meaning of the term defined.

105 (12) *New business facility.* — The term "new business
106 facility" means a business facility which satisfies all the
107 requirements of subparagraphs (A), (B), (C) and (D) of
108 this subdivision.

109 (A) The facility is employed by the taxpayer in the
110 conduct of a business the net income of which is taxable
111 under article twenty-one or twenty-four of this chapter.
112 Such facility shall not be considered a new business
113 facility in the hands of the taxpayer if the taxpayer's
114 only activity with respect to such facility is to lease it
115 to another person or persons.

116 (B) Such facility is purchased by, or leased to, the
117 taxpayer and is placed in service or use on or after the
118 first day of March, one thousand nine hundred eighty-
119 five.

120 (C) The facility was not acquired by the taxpayer
121 from a related person. The tax commissioner can waive
122 this requirement if the facility was acquired from a
123 related party for its fair market value.

124 (D) Such facility was not in service or use during the

125 ninety days immediately prior to transfer of the title to
126 such facility, or to the commencement of the term of the
127 lease of such facility, unless upon application of the
128 taxpayer, setting forth good and sufficient cause, the tax
129 commissioner consents to waiving this ninety-day
130 period.

131 (13) *New employee.* — The term “new employee”
132 means a person residing and domiciled in this state,
133 hired by the taxpayer to fill a position for a job in this
134 state, which previously did not exist in the business
135 enterprise in this state, prior to the date on which the
136 taxpayer’s qualified investment is placed in service or
137 use in this state. In no case shall the new employees
138 allowed for purposes of this credit exceed the total
139 increase in the taxpayer’s employment in this state. A
140 person shall be deemed to be a “new employee” if such
141 person’s duties in connection with the operation of the
142 business enterprise are on:

143 (A) A regular, full-time and permanent basis.

144 (1) “Full-time employment” means employment for at
145 least one hundred twenty hours per month at a wage not
146 less than the prevailing state or federal minimum wage,
147 depending on which minimum wage provision is
148 applicable to the business.

149 (2) “Permanent employment” does not include em-
150 ployment that is temporary or seasonal.

151 (B) A part-time basis, provided such person is
152 customarily performing such duties at least twenty
153 hours per week for at least six months during the
154 taxable year.

155 (14) *New job.* — The term “new job” means a job
156 which did not exist in the business of the taxpayer in
157 this state prior to the taxpayer’s qualified investment
158 being made, and which is filled by a new employee.

159 (15) *New property.* — The term “new property”
160 means:

161 (A) Property the construction, reconstruction or
162 erection of which is completed on or after March one,

163 one thousand nine hundred eighty-five, and placed in
164 service or use after such date; and

165 (B) Property leased or acquired by the taxpayer that
166 is placed in service or use in this state on or after the
167 first day of March, one thousand nine hundred eighty-
168 five, if the original use of such property commences with
169 the taxpayer and commences after such date.

170 (16) *Original use.* — The term “original use” means
171 the first use to which the property is put, whether or
172 not such use corresponds to the use of the property by
173 the taxpayer.

174 (17) *Partnership and partner.* — The term “partner-
175 ship” includes a syndicate, group, pool, joint venture or
176 other unincorporated organization through or by means
177 of which any business, financial operation or venture is
178 carried on, and which is not a trust or estate, a
179 corporation or a sole proprietorship. The term “partner”
180 includes a member in such a syndicate, group, pool, joint
181 venture or organization.

182 (18) *Person.* — The term “person” includes any
183 natural person, corporation or partnership.

184 (19) *Property purchased or leased for business expan-*
185 *sion.*

186 (A) *Included property.* — Except as provided in
187 subparagraph (B), the term “property purchased or
188 leased for business expansion” means real property and
189 improvements thereto, and tangible personal property,
190 but only if such real or personal property was con-
191 structed, purchased, or leased and placed in service or
192 use by the taxpayer, for use as a component part of a
193 new or expanded business facility, as defined in this
194 section, which is located within West Virginia. This
195 term includes only:

196 (1) Real property and improvements thereto having a
197 useful life of four or more years, placed in service or use
198 on or after the first day of March, one thousand nine
199 hundred eighty-five, by the taxpayer.

200 (2) Real property and improvements thereto, or

201 tangible personal property acquired by written lease
202 having a primary term of ten or more years and placed
203 in service or use by the taxpayer on or after the first
204 day of March, one thousand nine hundred eighty-five.

205 (3) Tangible personal property placed in service or
206 use by the taxpayer on or after the first day of March,
207 one thousand nine hundred eighty-five, with respect to
208 which depreciation, or amortization in lieu of depreci-
209 ation, is allowable in determining the personal or
210 corporation net income tax liability of the business
211 taxpayer under article twenty-one or twenty-four of this
212 chapter, and which has a useful life at the time such
213 property is placed in service or use in this state, of four
214 or more years.

215 (4) Tangible personal property acquired by written
216 lease having a primary term of four years or longer, that
217 commenced and was executed by the parties thereto on
218 or after the first day of February, one thousand nine
219 hundred eighty-six, if used as a component part of a new
220 or expanded business facility, shall be included within
221 this definition.

222 (5) Tangible personal property owned or leased, and
223 used by the taxpayer at a business location outside this
224 state which is moved into this state on or after the first
225 day of February, one thousand nine hundred eighty-six,
226 for use as a component part of a new or expanded
227 business facility located in this state: *Provided*, That if
228 the property is owned, it must be depreciable or
229 amortizable personal property for income tax purposes,
230 and have a useful life of four or more years remaining
231 at the time it is placed in service or use in this state,
232 and if the property is leased, the primary term of the
233 lease remaining at the time the leased property is placed
234 in service or use in this state, must be four or more
235 years:

236 (B) *Excluded property*. — The term “property pur-
237 chased or leased for business expansion” shall not
238 include:

239 (1) Property owned or leased by the taxpayer and for
240 which credit was taken under article thirteen-c of this

241 chapter prior to its repeal, on the thirteenth day of
242 April, one thousand nine hundred eighty-five, or under
243 article thirteen-d or thirteen-e of this chapter;

244 (2) Repair costs, including materials used in the
245 repair, unless for federal income tax purposes, the cost
246 of the repair must be capitalized and not expensed;

247 (3) Motor vehicles licensed by the department of
248 motor vehicles: *Provided*, That such property, if pur-
249 chased or leased on or after the first day of February,
250 one thousand nine hundred eighty-six, shall not be
251 excluded by virtue of this clause (3);

252 (4) Airplanes;

253 (5) Off-premise transportation equipment: *Provided*,
254 That such property, if purchased or leased on or after
255 the first day of February, one thousand nine hundred
256 eighty-six, shall not be excluded by virtue of this clause
257 (5);

258 (6) Property which is primarily used outside this
259 state; and

260 (7) Property which is acquired incident to the pur-
261 chase of the stock or assets of the seller, unless for good
262 cause shown, the tax commissioner consents to waiving
263 this requirement.

264 (C) *Purchase date*. — Property shall be deemed to
265 have been purchased prior to a specified date only if:

266 (1) The physical construction, reconstruction or
267 erection of the property was begun prior to the specified
268 date, or such property was constructed, reconstructed,
269 erected or acquired pursuant to a written contract as
270 existing and binding on the purchase prior to the
271 specified date:

272 (2) The machinery or equipment was owned by the
273 taxpayer prior to the specified date or was acquired by
274 the taxpayer pursuant to a binding purchase contract
275 which was in effect prior to the specified date; or

276 (3) In the case of leased property, there was a binding
277 written lease or contract to lease identifiable property
278 in effect prior to the specified date.

279 (20) *Purchase*. — The term “purchase” means any
280 acquisition of property, but only if:

281 (A) The property is not acquired from a person whose
282 relationship to the person acquiring it would result in
283 the disallowance of deductions under Section 267 or 707
284 (b) of the United States Internal Revenue Code of 1954,
285 as amended, and in effect on the first day of January,
286 one thousand nine hundred eighty-five;

287 (B) The property is not acquired by one component
288 member of a controlled group from another component
289 member of the same controlled group. The tax commis-
290 sioner can waive this requirement if the property was
291 acquired from a related party for its then fair market
292 value; and

293 (C) The basis of the property for federal income tax
294 purposes, in the hands of the person acquiring it, is not
295 determined:

296 (1) In whole or in part by reference to the federal
297 adjusted basis of such property in the hands of the
298 person from whom it was acquired; or

299 (2) Under Section 1014 (e) of the United States
300 Internal Revenue Code of 1954, as amended, and in
301 effect on the first day of January, one thousand nine
302 hundred eighty-five.

303 (21) *Qualified activity*. — The term “qualified activ-
304 ity” means any business or other activity subject to the
305 tax imposed by article twelve-a or thirteen (or both) of
306 this chapter: *Provided*, That on and after the first day
307 of July, one thousand nine hundred eighty-seven, the
308 phrase “taxes imposed by article twelve-a or thirteen (or
309 both) of this chapter” shall mean “taxes imposed by
310 articles thirteen, thirteen-a, thirteen-b, twenty-one,
311 twenty-three and twenty-four of this chapter (or any one
312 or combination of such articles of this chapter).”

313 (22) *Related person*. — The term “related person”
314 means:

315 (A) A corporation, partnership, association or trust
316 controlled by the taxpayer;

317 (B) An individual, corporation, partnership, associa-
318 tion or trust that is in control of the taxpayer;

319 (C) A corporation, partnership, association or trust
320 controlled by an individual, corporation, partnership,
321 association or trust that is in control of the taxpayer; or

322 (D) A member of the same controlled group as the
323 taxpayer.

324 For purposes of subdivisions (20) and (22) of this
325 section, "control," with respect to a corporation, means
326 ownership, directly or indirectly, of stock possessing
327 fifty percent or more of the total combined voting power
328 of all classes of the stock of such corporation entitled to
329 vote. "Control," with respect to a trust, means owner-
330 ship, directly or indirectly, of fifty percent or more of
331 the beneficial interest in the principal or income of such
332 trust. The ownership of stock in a corporation, of a
333 capital or profits interest in a partnership or association
334 or of a beneficial interest in a trust shall be determined
335 in accordance with the rules for constructive ownership
336 of stock provided in Section 267 (c) of the United States
337 Internal Revenue Code of 1954, as amended, other than
338 paragraph (3) of such section.

339 (23) *Replacement facility.* — The term "replacement
340 facility" means any property (other than an expanded
341 facility) that replaces or supersedes any other property
342 located within this state that:

343 (A) The taxpayer or a related person used in or in
344 connection with any activity for more than two years
345 during the period of five consecutive years ending on the
346 date the replacement or superseding property is placed
347 in service by the taxpayer; or

348 (B) Is not used by the taxpayer or a related person
349 in or in connection with any qualified activity for a
350 continuous period of one year or more commencing with
351 the date the replacement or superseding property is
352 placed in service by the taxpayer.

353 (24) *Taxpayer.* — The term "taxpayer" means any
354 person subject to the tax imposed by article twelve-a or
355 thirteen (or both) of this chapter: *Provided*, That on and

356 after the first day of July, one thousand nine hundred
357 eighty-seven, the phrase “taxes imposed by article
358 twelve-a or thirteen (or both) of this chapter” shall mean
359 “taxes imposed by articles thirteen, thirteen-a, thirteen-
360 b, twenty-one, twenty-three and twenty-four of this
361 chapter (or any one or combination of such articles of
362 this chapter).”

363 (25) *This code.* — The term “this code” means the code
364 of West Virginia, one thousand nine hundred thirty-one,
365 as amended.

366 (26) *This state.* — The term “this state” means the
367 state of West Virginia.

368 (27) *Used property.* — The term “used property”
369 means property acquired after the twenty-eighth day of
370 February, one thousand nine hundred eighty-five, that
371 is not “new property.”

§11-13C-4. Amount of credit allowed.

1 (a) *Credit allowed.* — Eligible taxpayers shall be
2 allowed a credit against the portion of taxes imposed by
3 this state that are attributable to and the consequence
4 of the taxpayer’s qualified investment in a new or
5 expanded business in this state, which results in the
6 creation of new jobs. The amount of this credit shall be
7 determined and applied as hereinafter provided in this
8 article.

9 (b) *Amount of credit.* — The amount of credit allow-
10 able is determined by multiplying the amount of the
11 taxpayer’s “qualified investment” (determined under
12 section four-a or six, or both) in “property purchased for
13 business expansion” (as defined in section three) by the
14 taxpayer’s new jobs percentage (determined under
15 section seven). The product of this calculation estab-
16 lishes the maximum amount of credit allowable under
17 this article, due to the qualified investment.

18 (c) *Application of credit over ten years.* — The amount
19 of credit allowable must be taken over a ten-year period,
20 at the rate of one tenth of the amount thereof per taxable
21 year, beginning with the taxable year in which the
22 taxpayer places the qualified investment in service or

23 use in this state, unless the taxpayer elected to delay the
24 beginning of the ten-year period until the next succeed-
25 ing taxable year. This election shall be made in the
26 annual income tax return filed for the taxable year in
27 which credit is first taken on the qualified investment
28 placed into service or use by the taxpayer. Once made,
29 the election cannot be revoked. The annual credit
30 allowance shall be taken in the manner prescribed in
31 section four of this article.

32 (d) *Placed in service or use.* — For purposes of the
33 credit allowed by this section, property shall be
34 considered placed in service or use in the earlier of the
35 following taxable years:

36 (1) The taxable year in which, under the taxpayer's
37 depreciation practice, the period for depreciation with
38 respect to such property begins; or

39 (2) The taxable year in which the property is placed
40 in a condition or state of readiness and availability for
41 a specifically assigned function.

§11-13C-4b. Credit allowable for certified projects.

1 (a) *In general.* — A project certified by the tax
2 commissioner shall be eligible for the credit allowable
3 by this article. A project eligible for certification under
4 this section is one where:

5 (1) The qualified investment under this article creates
6 at least fifty new jobs but such qualified investment is
7 placed in service or use over a period of three successive
8 tax years: *Provided,* That such qualified investment is
9 made pursuant to a written business facility develop-
10 ment plan of the taxpayer providing for an integrated
11 project for investment at one or more new or expanded
12 business facilities, a copy of which must be attached to
13 the taxpayer's application for project certification and
14 approved by the tax commissioner, and the qualified
15 investment placed in service or use during the first tax
16 year would not have been made without the expectation
17 of making the qualified investment placed in service or
18 use during the next two succeeding tax years;

19 (2) The qualified investment is made by one or more
20 persons, but some or all of the new jobs created at each
21 new or expanded business facility as a result of the
22 qualified investment are created by one or more other
23 persons: *Provided*, That at least fifty new jobs are
24 created at the new or expanded business facility or
25 facilities in which the qualified investment is made, and
26 such jobs are, upon application, certified by the tax
27 commissioner as new jobs created as a direct result of
28 the qualified investment, and that such qualified
29 investment is made pursuant to a written business
30 facility development plan of the taxpayer providing for
31 an integrated project for investment at one or more new
32 or expanded business facilities, a copy of which must be
33 attached to the taxpayer's application for project
34 certification and approved by the tax commissioner;

35 (3) The qualified investment is made by one or more
36 persons but some or all of the new jobs created as a
37 direct result of the qualified investment are created by
38 one or more other persons: *Provided*, That at least fifty
39 new jobs are created within a fifty mile radius of each
40 new or expanded business facility in which the qualified
41 investment is made, and such jobs are, upon application,
42 certified by the tax commissioner as being new jobs
43 created as a direct result of the qualified investment,
44 and that such qualified investment is made pursuant to
45 a written business facility development plan of the
46 taxpayer providing for an integrated project for
47 investment at one or more new or expanded business
48 facilities, a copy of which must be attached to the
49 taxpayer's application for project certification and
50 approved by the tax commissioner.

51 (b) *Application for certification.* — The application for
52 certification of a project under this section shall be filed
53 with and approved by the tax commissioner prior to any
54 credit being claimed or allowed for the project's
55 qualified investment and new jobs created as a direct
56 result of the qualified investment. This application shall
57 be approved in writing by all the participants in the
58 project and shall contain such information as the tax

59 commissioner may require to determine whether the
60 project should be certified as eligible for credit under
61 this article.

62 (c) *Taking of credit.*

63 (1) If the certified project for which qualified invest-
64 ment is made involves one or more persons making the
65 capital investment and one or more persons, or a
66 combination thereof, creating at least fifty new jobs at
67 the site of the new or expanded business facility or
68 facilities, then credit shall be allowed under this article
69 for the certified project based upon the qualified
70 investment in the certified project (as determined under
71 section six) multiplied by the project's new jobs
72 percentage (determined under section seven).

73 (2) If the certified project for which qualified invest-
74 ment is made involves one or more persons making the
75 capital investment and one or more persons, or a
76 combination thereof, creating at least fifty new jobs
77 located within a fifty mile radius of each new or
78 expanded business facility in which the qualified
79 investment is made, then credit shall be allowed under
80 this article for the certified project based upon the
81 qualified investment in the certified project (as deter-
82 mined under section six) multiplied by fifty percent.

83 (3) The amount of credit allowable, as determined
84 under subdivision (1) or (2), above, shall be applied as
85 provided in section five, and shall be claimed in the
86 manner specified in the project's application to the tax
87 commissioner for certification under this section, by one
88 participant in the project or divided among the several
89 participants in the project, and for this purpose the
90 numerator of the payroll factor shall be the total
91 compensation paid in this state during the taxable year
92 by all project participants to all new employees filling
93 the new jobs created and the denominator shall be the
94 total compensation paid in this state during the taxable
95 year by all project participants to their employees. Such
96 allocation, if approved by the tax commissioner, shall
97 constitute a binding election by the participants in the
98 project for the entire term during which the credit

99 attributable to the qualified investment in the certified
100 project may be applied to reduce tax liabilities. The
101 participant or participants claiming the credit for
102 qualified investments in a certified project shall
103 annually file with their income tax returns filed under
104 this chapter:

105 (A) Certification that the participant's qualified
106 investment property continues to be used in the project
107 and if disposed of during the tax year, was not disposed
108 of prior to expiration of its useful life;

109 (B) Certification that the new jobs created by the
110 project's qualified investment continue to exist and are
111 filled by persons who are residents of this state; and

112 (C) Such other information as the tax commissioner
113 requires to determine continuing eligibility to claim the
114 annual credit allowance for the project's qualified
115 investment.

116 (d) *Terms defined.* — For purposes of this section:

117 (1) *New employee.* — The term “new employee” means
118 a person residing and domiciled in this state, hired by
119 a participant to fill a position for a job which previously
120 did not exist in this state prior to the date on which the
121 project's qualified investment is placed in service or use
122 in this state. In no case shall the new employees allowed
123 for purposes of this credit exceed the total increases in
124 the number of persons employed by the project's
125 participants (considered as a group) in this state. A
126 person shall be deemed to be a “new employee” if such
127 person's duties in connection with the operation of the
128 certified project are on:

129 (A) A regular, full-time and permanent basis.

130 (1) “Full-time employment” means employment for at
131 least one hundred twenty hours per month at a wage not
132 less than the prevailing state or federal minimum wage,
133 depending on which minimum wage provision is
134 applicable to the business.

135 (2) “Permanent employment” does not include em-
136 ployment that is temporary or seasonal.

137 (B) A part-time basis, provided such person is
138 customarily performing such duties at least twenty
139 hours per week for at least six months during the
140 taxable year.

141 (2) *New job.* — The term “new job” means a job which
142 did not exist in this state prior to the project’s qualified
143 investment being made, and which is filled by a new
144 employee.

145 (3) *Participant.* — The term “participant” means any
146 person who directly makes a qualified investment in a
147 certified project, or who employs persons filling the jobs
148 certified by the tax commissioner as being new jobs
149 created as a direct result of the project’s qualified
150 investment.

151 (e) *Effective date.*

152 (1) This section shall apply to a project having
153 qualified investment of at least fifty million dollars
154 placed in service or use between the first day of March,
155 one thousand nine hundred eighty-five and the first day
156 of February, one thousand nine hundred eighty-six, and
157 shall also apply to qualified investment made on or after
158 the first day of February, one thousand nine hundred
159 eighty-six.

160 (2) The application for project certification for a
161 project having qualified investment of at least fifty
162 million dollars placed in service or use between the first
163 day of March, one thousand nine hundred eighty-five
164 and the first day of February, one thousand nine
165 hundred eighty-six, shall be deemed timely filed under
166 subsection (b) of this section only if such application is
167 filed with the tax commissioner prior to the thirty-first
168 day of December, one thousand nine hundred eighty-six:
169 *Provided,* That the tax commissioner shall not certify
170 such project until the project participants certify that
171 at least fifty new jobs were created by them prior to the
172 first day of January, one thousand nine hundred eighty-
173 eight, as a direct result of their qualified investment in
174 the project, and that such jobs did not previously exist
175 in this state, determined as of the thirty-first day of
176 January, one thousand nine hundred eighty-six; that the

177 inclusion of such property shall not give rise to a refund
178 or credit of any taxes administered under this chapter
179 for taxable years ending before the first day of January,
180 one thousand nine hundred eighty-seven; and that the
181 ten-year credit period for such certified project shall
182 begin with the current taxable year of the project
183 participant or participants who will be claiming the
184 allowable credit.

§11-13C-5. Application of annual credit allowance.

1 (a) *In general.* — The aggregate annual credit allo-
2 wance for the current taxable year is an amount equal
3 to the sum of:

4 (1) The one-tenth part allowed under section four, for
5 qualified investment placed into service or use during
6 a prior taxable year, plus

7 (2) The one-tenth part allowed under section four, for
8 qualified investment placed into service or use during
9 the current taxable year, plus

10 (3) The one-tenth part allowed under section four-a
11 for locating corporate headquarters in this state; or the
12 amount allowed under section seven-a of this article of
13 the taxable year.

14 (b) *Application of current year annual credit allo-*
15 *wance.* — The amount determined under subsection (a)
16 shall be allowed as a credit against that portion of the
17 taxpayer's state tax liability which is attributable to and
18 the direct result of the taxpayer's qualified investment,
19 and shall be applied as provided in subsections (c)
20 through (k), both inclusive, and in that order.

21 (c) *Business and occupation taxes.*

22 (1) That portion of the allowable credit attributable to
23 qualified investment in a business or other activity
24 subject to the taxes imposed by article thirteen of this
25 chapter, shall first be applied to reduce up to eighty
26 percent of the taxes imposed by article thirteen of this
27 chapter for the taxable year (determined before appli-
28 cation of allowable credits against tax and the annual
29 exemption).

30 (2) If the taxes due under said article thirteen are not
31 solely attributable to and the direct result of the
32 taxpayer's qualified investment in a business or other
33 activity taxable under article thirteen of this chapter,
34 the amount of such taxes, which are so attributable,
35 shall be determined by multiplying the amount of taxes
36 due under said article thirteen, for the taxable year
37 (determined before application of any allowable credits
38 against tax and the annual exemption), by a fraction, the
39 numerator of which is all wages, salaries and other
40 compensation paid during the taxable year to all
41 employees of the taxpayer employed in this state, whose
42 positions are directly attributable to the qualified
43 investment in a business or other activity taxable under
44 article thirteen of this chapter. The denominator of the
45 fraction shall be the wages, salaries and other compen-
46 sation paid during the taxable year to all employees of
47 the taxpayer employed in this state, whose positions are
48 directly attributable to the business or other activity of
49 the taxpayer, that is taxable under article thirteen of
50 this chapter.

51 (3) The annual exemption allowed by section three of
52 said article thirteen, plus any credits allowable under
53 articles thirteen-d and thirteen-e of this chapter, shall
54 be applied against and reduce only the portion of article
55 thirteen taxes not apportioned to the qualified invest-
56 ment under this article: *Provided*, That any excess
57 exemption or credits may be applied against the amount
58 of article thirteen taxes apportioned to the qualified
59 investment under this article, that is not offset by the
60 amount of annual credit against such taxes allowed
61 under this article for the taxable year, unless their
62 application is otherwise prohibited by this chapter.

63 (d) *Carrier income taxes.*

64 (1) That portion of the allowable credit attributable to
65 qualified investment in a business or other activity
66 subject to the taxes imposed by article twelve-a of this
67 chapter, shall first be applied to reduce up to eighty
68 percent of the taxes imposed by article twelve-a of this
69 chapter, for the taxable year.

70 (2) If the taxes due under said article twelve-a are not
71 solely attributable to and the direct result of the
72 taxpayer's qualified investment in a business or other
73 activity taxable under article twelve-a of this chapter,
74 the amount of such taxes, which are so attributable,
75 shall be determined by multiplying the amount of taxes
76 due under said article twelve-a for the taxable year, by
77 a fraction, the numerator of which is all wages, salaries
78 and other compensation paid during the taxable year to
79 all employees of the taxpayer employed in this state,
80 whose positions are directly attributable to the qualified
81 investment in a business or other activity taxable under
82 article twelve-a of this chapter. The denominator of the
83 fraction shall be the wages, salaries and other compen-
84 sation paid during the taxable year to all employees of
85 the taxpayer, employed in this state, whose positions are
86 directly attributable to the business or other activity of
87 the taxpayer that is taxable under article twelve-a of
88 this chapter.

89 (e) *Severance taxes.*

90 (1) On and after the first day of July, one thousand
91 nine hundred eighty-seven, that portion of the allowable
92 credit attributable to qualified investment in a business
93 or other activity subject to the tax imposed by article
94 thirteen-a of this chapter, and qualified investment in
95 a business or activity that was subject to the tax imposed
96 by article thirteen of this chapter prior to said first day
97 of July, but on and after said first day of July, is subject
98 to the tax imposed by article thirteen-a of this chapter,
99 shall first be applied to reduce up to eighty percent of
100 the taxes imposed by article thirteen-a of this chapter
101 for the taxable year (determined before application of
102 any allowable credits against tax).

103 (2) If the taxes due under said article thirteen-a are
104 not solely attributable to and the direct result of the
105 taxpayer's qualified investment in a business or other
106 activity taxable under article thirteen-a of this chapter,
107 the amount of such taxes which are so attributable, shall
108 be determined by multiplying the amount of taxes due
109 under said article thirteen-a for the taxable year
110 (determined before application of any allowable credits

111 against tax), by a fraction, the numerator of which is
112 all wages, salaries and other compensation paid during
113 the taxable year to all employees of the taxpayer
114 employed in this state, whose positions are directly
115 attributable to the qualified investment in a business or
116 other activity taxable under article thirteen-a of this
117 chapter. The denominator of the fraction shall be the
118 wages, salaries and other compensation paid during the
119 taxable year to all employees of the taxpayer employed
120 in this state, whose positions are directly attributable to
121 the business or other activity of the taxpayer that is
122 taxable under article thirteen-a of this chapter.

123 (3) Any credits allowable under articles thirteen-d
124 and thirteen-e of this chapter shall be applied against
125 and reduce only the portion of article thirteen-a taxes
126 not apportioned to the qualified investment under this
127 article: *Provided*, That any excess credits may be
128 applied against the amount of article thirteen taxes
129 apportioned to the qualified investment under this
130 article, that is not offset by the amount of annual credit
131 against such taxes allowed under this article for the
132 taxable year, unless their application is otherwise
133 prohibited by this chapter.

134 (f) *Telecommunications taxes.*

135 (1) On and after the first day of July, one thousand
136 nine hundred eighty-seven, that portion of the allowable
137 credit attributable to qualified investment in a business
138 or other activity subject to the taxes imposed by article
139 thirteen-b of this chapter, shall first be applied to reduce
140 up to eighty percent of the taxes imposed by article
141 thirteen-b of this chapter for the taxable year (deter-
142 mined before application of allowable credits against
143 tax) and qualified investment in a business or activity
144 that was subject to the taxes imposed by article twelve-
145 a of this chapter prior to said first day of July, but on
146 and after said first day of July is subject to the tax
147 imposed by article thirteen-b of this chapter.

148 (2) If the taxes due under said article thirteen-b are
149 not solely attributable to and the direct result of the
150 taxpayer's qualified investment in a business or other

151 activity taxable under article thirteen-b of this chapter,
152 the amount of such taxes, which are so attributable,
153 shall be determined by multiplying the amount of taxes
154 due under said article thirteen-b for the taxable year
155 (determined before application of any allowable credits
156 against tax), by a fraction, the numerator of which is
157 all wages, salaries and other compensation paid during
158 the taxable year to all employees of the taxpayer
159 employed in this state whose positions are directly
160 attributable to the qualified investment in a business or
161 other activity taxable under article thirteen-b of this
162 chapter. The denominator of the fraction shall be the
163 wages, salaries and other compensation paid during the
164 taxable year to all employees of the taxpayer employed
165 in this state whose positions are directly attributable to
166 the business or other activity of the taxpayer that is
167 taxable under article thirteen-b of this chapter.

168 (g) *Business franchise tax.*

169 (1) On and after the first day of July, one thousand
170 nine hundred eighty-seven, that portion of the allowable
171 credit attributable to qualified investment in a business
172 or activity subject to the taxes imposed by article
173 twenty-three of this chapter, and qualified investment
174 in a business or activity that was subject to the taxes
175 imposed by article thirteen of this chapter prior to said
176 first day of July, but on and after said first day of July,
177 is subject to the tax imposed by article twenty-three of
178 this chapter, shall first be applied to reduce up to eighty
179 percent of the taxes imposed by article twenty-three of
180 this chapter for the taxable year (determined after
181 application of the credits against tax provided in section
182 seventeen of said article twenty-three, but before
183 application of any other allowable credits against tax).

184 (2) If the taxes due under said article twenty-three
185 are not solely attributable to and the direct result of the
186 taxpayer's qualified investment in a business or other
187 activity taxable under article twenty-three, for the
188 taxable year (determined after application of the credits
189 against tax provided in section seventeen of said article
190 twenty-three, but before application of any other
191 allowable credits), by a fraction, the numerator of which

192 is all wages, salaries and other compensation paid
193 during the taxable year to all employees of the taxpayer
194 employed in this state, whose positions are directly
195 attributable to the qualified investment in a business or
196 other activity taxable under article twenty-three of this
197 chapter. The denominator of the fraction shall be wages,
198 salaries and other compensation paid during the taxable
199 year to all employees of the taxpayer employed in this
200 state, whose positions are directly attributable to the
201 business or other activity of the taxpayer that is taxable
202 under article twenty-three of this chapter.

203 (3) Any credits allowable under articles thirteen-d
204 and thirteen-e of this chapter shall be applied against
205 and reduce only the portion of article twenty-three taxes
206 not apportioned to the qualified investment under this
207 article: *Provided*, That any excess exemption or credits
208 may be applied against the amount of article twenty-
209 three taxes apportioned to the qualified investment
210 under this article that is not offset by the amount of
211 annual credit against such taxes allowed under this
212 article for the taxable year, unless their application is
213 otherwise prohibited by this chapter.

214 (h) *Corporation net income taxes.*

215 (1) After application of subsections (c) through (g),
216 both inclusive of this section, any unused credit shall
217 next be applied to reduce up to eighty percent of the
218 taxes imposed by article twenty-four of this chapter, for
219 the taxable year (determined before application of
220 allowable credits against tax).

221 (2) If the taxes due under said article twenty-four
222 (determined before application of allowable credits
223 against tax) are not solely attributable to and the direct
224 result of the taxpayer's qualified investment, the amount
225 of such taxes which are so attributable, shall be
226 determined by multiplying the amount of taxes due
227 under said article twenty-four for the taxable year
228 (determined before application of allowable credits
229 against tax), by a fraction, the numerator of which is
230 all wages, salaries and other compensation paid during
231 the taxable year to all employees of the taxpayer

232 employed in this state whose positions are directly
233 attributable to the qualified investment. The denomina-
234 tor of the fraction shall be the wages, salaries and other
235 compensation paid during the taxable year to all
236 employees of the taxpayer employed in this state.

237 (3) Any credits allowable under article twenty-four of
238 this chapter shall be applied against and reduce only the
239 amount of article twenty-four taxes not apportioned to
240 the qualified investment under this article: *Provided,*
241 That any excess credits may be applied against the
242 amount of article twenty-four taxes apportioned to the
243 qualified investment under this article that is not offset
244 by the amount of annual credit against such taxes
245 allowed under this article for the taxable year, unless
246 their application is otherwise prohibited by this chapter.

247 (i) *Personal income taxes.*

248 (1) If the person making the qualified investment is
249 an electing small business corporation (as defined in
250 Section 1361 of the United States Internal Revenue Code
251 of 1954, as amended), a partnership or a sole proprie-
252 torship, then any unused credit (after application of
253 subsections (c), (d), (e), (f) and (g)) shall be allowed as
254 a credit against up to eighty percent of the taxes
255 imposed by article twenty-one of this chapter on the
256 income from business or other activity subject to tax
257 under article twelve-a, article thirteen, article thirteen-
258 a, article thirteen-b or article twenty-three of this
259 chapter.

260 (2) Electing small business corporations, partnerships
261 and other unincorporated organizations shall allocate
262 the credit allowed by this article among its members in
263 the same manner as profits and losses are allocated for
264 the taxable year.

265 (3) If the amount of taxes due under article twenty-
266 one of this chapter (determined before application of
267 allowable credits against tax) that is attributable to
268 business, is not solely attributable to and the direct
269 result of the qualified investment of the electing small
270 business corporation, partnership, other unincorporated
271 organization or sole proprietorship, the amount of such

272 taxes which are so attributable shall be determined by
273 multiplying the amount of taxes due under said article
274 twenty-one (determined before application of allowable
275 credits against tax), that is attributable to business by
276 a fraction, the numerator of which is all wages, salaries
277 and other compensation paid during the taxable year to
278 all employees of the electing small business corporation,
279 partnership, other unincorporated organization or sole
280 proprietorship employed in this state, whose positions
281 are directly attributable to the qualified investment.
282 The denominator of the fraction shall be the wages,
283 salaries and other compensation paid during the taxable
284 year to all employees of the taxpayer.

285 (4) No credit shall be allowed under this section
286 against any employer withholding taxes imposed by
287 article twenty-one of this chapter.

288 (j) *Sales and use taxes.*

289 On and after the first day of July, one thousand nine
290 hundred eighty-seven, for purchases of tangible personal
291 property and taxable services made on or after that
292 date, that portion of the allowable credit, which is
293 attributable to qualified investment in a business or
294 activity subject to the taxes imposed by articles fifteen
295 and fifteen-a of this chapter on purchases for use or
296 consumption in the conduct of such business or activity,
297 shall be applied to reduce up to eighty percent of the
298 taxes imposed by articles fifteen and fifteen-a of this
299 chapter on purchases that are directly used or consumed
300 in the qualified investment activity. When property and
301 services purchased for use or consumption are not solely
302 used or consumed in the qualified investment activity,
303 the cost thereof shall be apportioned between such
304 activities. Only that amount apportioned to purchases
305 directly used or consumed in the qualified investment
306 activity shall be included when applying the credit
307 allowable under this subsection.

308 (k) *Ad valorem property taxes; unemployment taxes*
309 *and workers' compensation premiums.*

310 (1) After application of subsections (a) through (i),
311 both inclusive, of this section, any unused credit shall

312 be applied as a rebate for payment of the sum of the
313 following amounts:

314 (A) Eighty percent of the ad valorem property taxes
315 imposed by levying bodies pursuant to article eight of
316 this chapter, for the taxable year (including payments
317 in lieu of such taxes), on property of the taxpayer that
318 is directly attributable to the qualified investment
319 (including property having a useful life of less than four
320 years) of the taxpayer, in the new or expanded business
321 facility of the taxpayer resulting in new jobs; plus

322 (B) Eighty percent of the taxes imposed by article
323 five, chapter twenty-one-a of this code for the taxable
324 year attributable to the compensation of new employees
325 filling the new jobs that are directly attributable to the
326 qualified investment; plus

327 (C) Twenty percent of the workers' compensation
328 premiums imposed by article two, chapter twenty-three
329 of this code, for the taxable year attributable to the
330 compensation paid new employees filling the new jobs,
331 that are directly attributable to the qualified
332 investment.

333 (2) A taxpayer eligible to claim this rebate shall apply
334 either the amount of the unused credit or the sum
335 determined under subdivision (1), whichever is less,
336 against the remaining twenty percent of the taxes
337 imposed by articles twelve-a, thirteen, thirteen-a,
338 thirteen-b, twenty-one, twenty-three and twenty-four of
339 this chapter, attributable to the qualified investment
340 under this article. If any amount of rebate remains after
341 its application against the remaining twenty percent of
342 taxes as aforesaid, the amount remaining shall be
343 carried forward to each ensuing tax year until used or
344 the expiration of the twelfth subsequent to tax year in
345 which the qualified investment was placed in service or
346 use in this state by the taxpayer.

347 (1) *Unused credit forfeited.* — If any credit remains
348 after application of subsection (b), the amount thereof
349 shall be forfeited. No carryover to a subsequent taxable
350 year or carryback to a prior taxable year shall be
351 allowed for the amount of any unused portion of any

352 annual credit allowance, except as specifically provided
353 in subsection (k).

354 (m) *Effective date.*

355 (1) This section, as amended, (in the year one thou-
356 sand nine hundred eighty-six) shall be effective upon
357 passage. It shall be retroactive, and shall be in lieu of
358 the method provided by this section for application of
359 this credit prior to this amendment, for qualified
360 investment made on or after the first day of March, one
361 thousand nine hundred eighty-five.

362 (2) This section as amended (in the year one thousand
363 nine hundred eighty-seven) shall be effective for taxable
364 years ending after the thirtieth day of June, one
365 thousand nine hundred eighty-seven.

§11-13C-7. New jobs percentage.

1 (a) *In general.* — The new jobs percentage is based on
2 the number of new jobs created in this state that are
3 directly attributable to the qualified investment of the
4 taxpayer.

5 (b) *Applicable percentage.* — For the purpose of
6 subsection (a), the applicable new jobs percentage shall
7 be determined under the following table:

8	If number of	The applicable
9	new jobs is:	percentage is:
10	1,000	90%
11	760	80%
12	520	70%
13	280	60%
14	50	50%

15 (c) *When a job is attributable.* — An employee's
16 position is directly attributable to the qualified invest-
17 ment if:

18 (1) The employee's service is performed or his base of
19 operations is at the new or expanded business facility;

20 (2) The position did not exist prior to the construction,
21 renovation, expansion or acquisition of the business
22 facility and the making of the qualified investment; and

23 (3) But for the qualified investment, the position
24 would not have existed.

25 (d) *Certification of new jobs.* — With the annual
26 return for the taxes imposed by article twelve-a or
27 thirteen of this chapter, filed for the taxable year in
28 which the qualified investment is first placed in service
29 or use in this state, the taxpayer shall estimate and
30 certify the number of new jobs reasonably projected to
31 be created by it in this state within the period pres-
32 cribed in subsection (f), that are, or will be, directly
33 attributable to the qualified investment of the taxpayer:
34 *Provided,* That on and after the first day of July, one
35 thousand nine hundred eighty-seven, the phrase “taxes
36 imposed by article twelve-a or thirteen (or both) of this
37 chapter” shall mean “taxes imposed by articles thirteen,
38 thirteen-a, thirteen-b, twenty-one, twenty-three and
39 twenty-four of this chapter (or any one or combination
40 of such articles of this chapter).”

41 (e) *Equivalency of permanent employees.* — The hours
42 of part-time employees shall be aggregated to determine
43 the number of equivalent full-time employees for the
44 purpose of subsection (b) hereof but not for the purposes
45 of subsection (c) hereof.

46 (f) *Redetermination of new jobs percentage.* — With the
47 annual return for the taxes imposed by article twenty-
48 one or twenty-four of this chapter, filed for the third
49 taxable year in which the qualified investment is in
50 service or use, the taxpayer shall certify the actual
51 number of new jobs created by it in this state, that are
52 directly attributable to the qualified investment of the
53 taxpayer: *Provided,* That on and after the first day of
54 July, one thousand nine hundred eighty-seven, the
55 phrase “taxes imposed by article twelve-a or thirteen (or
56 both) of this chapter” shall mean “taxes imposed by
57 articles thirteen, thirteen-a, thirteen-b, twenty-one,
58 twenty-three and twenty-four of this chapter (or any one
59 or combination of such articles of this chapter).”

60 (1) If the actual number of jobs created would result
61 in a higher new jobs percentage, the credit allowed
62 under this article shall be redetermined and amended

63 returns filed for the first and second taxable years that
64 the qualified investment was in service or use in this
65 state.

66 (2) If the actual number of jobs created would result
67 in a lower new jobs percentage, the credit previously
68 allowed under this article shall be redetermined and
69 amended returns filed for the first and second taxable
70 years. In applying the amount of redetermined credit
71 allowable for the two preceding taxable years, the
72 redetermined credit shall first be applied to the extent
73 it was originally applied in such prior two years to
74 personal income taxes, then to corporation net income
75 taxes, then to business franchise taxes, then to telecom-
76 munications taxes, then to severance taxes, then to
77 carrier income taxes and lastly to business and occupa-
78 tion taxes. Any additional taxes due under this chapter
79 shall be remitted with the amended returns filed with
80 the tax commissioner, along with interest, as provided
81 in section seventeen, article ten of this chapter, and a
82 ten percent penalty, which may be waived by the tax
83 commissioner if the taxpayer shows that the over-
84 claimed amount of the new jobs percentage was due to
85 reasonable cause and not due to willful neglect.

§11-13C-7a. Small business credit.

1 (a) "*Small business*" defined. — For purposes of this
2 section, the term "small business" means a business
3 which has an annual payroll of one million five hundred
4 thousand dollars or less, or annual gross sales of not
5 more than five million dollars, whichever is the higher:
6 *Provided*, That beginning the first day of January, one
7 thousand nine hundred eighty-nine and each first day
8 of January thereafter, the tax commissioner shall
9 prescribe amounts which shall apply in lieu of the above
10 amounts during that calendar year. These amounts shall
11 be prescribed by increasing the amount of each by the
12 cost-of-living adjustment for such calendar year.

13 (1) *Cost-of-living adjustment*. — For purposes of
14 subsection (a), the cost-of-living adjustment for any
15 calendar year is the percentage (if any) by which:

16 (A) The consumer price index for the preceding
17 calendar year exceeds

18 (B) The consumer price index for the calendar year
19 one thousand nine hundred eighty-seven.

20 (2) *Consumer price index for any calendar year.* —
21 For purposes of subdivision (1), the consumer price
22 index for any calendar year is the average of the
23 Federal Consumer Price Index as of the close of the
24 twelve-month period ending on the thirty-first day of
25 August of such calendar year.

26 (3) *Consumer price index.* — For purposes of subdivi-
27 sion (2), the term “Federal Consumer Price Index”
28 means the last consumer price index for all urban
29 consumers published by the United States department
30 of labor.

31 (4) *Rounding.* — If any increase under subdivision (1)
32 is not a multiple of fifty dollars, such increase shall be
33 rounded to the next lowest multiple of fifty dollars.

34 (b) *Amount of credit allowed.*

35 (1) *Credit allowed.* — An eligible small business
36 taxpayer shall be allowed a credit against the portion
37 of taxes imposed by this state that are attributable to
38 and the direct consequence of the eligible small business
39 taxpayer’s qualified investment in a new or expanded
40 business in this state which results in the creation of at
41 least ten new jobs. The amount of this credit shall be
42 determined as provided in this section.

43 (2) *Amount of credit.* — The amount of credit allow-
44 able under this section is determined by dividing the
45 amount of the eligible small business taxpayer’s
46 “qualified investment” (determined under section six) in
47 “property purchased for business expansion” (as defined
48 in section three) by ten. The amount of qualified
49 investment so apportioned to each year of the ten year
50 credit period shall be the annual measure against which
51 taxpayer’s annual new jobs percentage (determined
52 under subsection (d)) is applied. The product of this
53 calculation establishes the maximum amount of credit
54 allowable each year for ten consecutive years under this
55 section due to the qualified investment.

56 (3) *Application of credit.* — The annual credit allow-
57 ance must be taken beginning with the taxable year in
58 which the taxpayer places the qualified investment into
59 service or use in this state, unless the taxpayer elects
60 to delay the beginning of the ten year credit period until
61 the next succeeding taxable year. This election shall be
62 made in the annual income tax return filed under this
63 chapter by the taxpayer for the taxable year in which
64 the qualified investment is placed in service or use. Once
65 made, this election cannot be revoked. The annual credit
66 allowance shall be taken and applied in the manner
67 prescribed in section five.

68 (c) *New jobs.* — The term “new jobs” has the meaning
69 ascribed to it in subdivision (14), subsection (b), section
70 three of this article: *Provided*, That the median compen-
71 sation of such new jobs shall not be less than eleven
72 thousand dollars per year and that beginning the first
73 day of January, one thousand nine hundred eighty-nine,
74 and each first day of January thereafter, the tax
75 commissioner shall adjust the median annual compen-
76 sation specified in this subsection by increasing the
77 amount thereof by the annual cost-of-living adjustment
78 determined under subsection (a).

79 (1) The term “new employee” shall have the meaning
80 ascribed to it in subdivision (13), subsection (b), section
81 three of this article: *Provided*, That such term shall not
82 include employees filling new jobs who:

83 (A) Are related individuals, as defined in subsection
84 (i), section 51 of the Internal Revenue Code of 1986, or
85 a person who owns ten percent or more of the business
86 with such ownership interest to be determined under
87 rules set forth in subsection (b), section 267 of said
88 Internal Revenue Code; or

89 (B) Worked for the taxpayer during the six-month
90 period ending on the date taxpayer’s qualified invest-
91 ment is placed in service or use and is rehired by the
92 taxpayer during the six-month period beginning on the
93 date taxpayer’s qualified investment is placed in service
94 or use.

95 (2) *When a job is attributable.*— An employee’s

96 position is directly attributable to the qualified invest-
97 ment if:

98 (A) The employee's service is performed or his base
99 of operations is at the new or expanded business facility;

100 (B) The position did not exist prior to the construc-
101 tion, renovation, expansion or acquisition of the business
102 facility and the making of the qualified investment; and

103 (C) But for the qualified investment, the position
104 would not have existed.

105 (d) *New jobs percentage.* — The annual new jobs
106 percentage is based on the number of new jobs created
107 in this state by the taxpayer that is directly attributable
108 to taxpayer's qualified investment.

109 (1) If at least ten new jobs are created and filled
110 during the taxable year in which the qualified invest-
111 ment is placed in service or use, the applicable new jobs
112 percentage shall be thirty percent: *Provided*, That for
113 each new job over ten, up to forty such additional new
114 jobs, the applicable new jobs percentage shall be
115 increased by adding thereto one half of one percent, with
116 the maximum new jobs percentage not to exceed fifty
117 percent.

118 (2) During each of the remaining nine years of the ten
119 year credit period, the annual new jobs percentage shall
120 be based on the average number of new jobs that were
121 filled during that taxable year: *Provided*, That for
122 purposes of estimating the new jobs percentage that will
123 be applicable for each subsequent credit year, the
124 taxpayer shall use the new jobs percentage allowable for
125 the taxable year immediately prior thereto, and in the
126 annual income tax return filed under this chapter for
127 the then current tax year, taxpayer shall redetermine
128 his allowable new jobs percentage for that year based
129 on the average number of new employees employed in
130 new jobs during that year (determined on a monthly
131 basis) created as the direct result of taxpayer's qualified
132 investment.

133 (e) *Certification of new jobs.* — With the annual
134 income tax return filed under this chapter for each

135 taxable year during the ten year credit period, the
136 taxpayer shall certify:

137 (1) the new jobs percentage for that taxable year;

138 (2) the amount of the credit allowance for that year;

139 (3) if the business is a partnership or electing small
140 business corporation, the amount of credit allocated to
141 the partners or shareholders, as the case may be;

142 (4) that qualified investment property continue to be
143 used in the business, or if any of it was disposed of
144 during the year the date of disposition and that such
145 property was not disposed of prior to expiration of its
146 useful life, as determined under section six;

147 (5) that the new jobs created by the qualified invest-
148 ment continue to exist and are filled by persons who
149 meet the definition of new employee (as defined in
150 subdivision (1), subsection (c) of this section) and are
151 paid an average annual compensation equal to or
152 greater than the minimum average annual compensa-
153 tion required by this section.

154 (f) *Small business project.* — A small business may
155 apply to the tax commissioner under section four-b for
156 certification of subdivision (1), subsection (a), section
157 four-b project if that project will create at least ten new
158 jobs.

159 (g) *Regulations.* — The tax commissioner shall pres-
160 scribe such regulations as he may deem necessary in
161 order to determine the amount of credit allowed under
162 this section to a taxpayer; to verify taxpayer's continued
163 entitlement to claim such credit; and to verify proper
164 application of the credit allowed. The tax commissioner
165 may, by regulation, require a taxpayer intending to
166 claim credit under this section to file with the tax
167 commissioner a notice of intent to claim this credit,
168 before the taxpayer begins reducing his monthly or
169 quarterly installment payments of estimated tax for the
170 credit provided in this section.

171 (h) *Effective date.* — The credit provided in this
172 section shall be allowed for qualified investment

173 property purchased or leased after the thirtieth day of
174 June, one thousand nine hundred eighty-seven.

**ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR
INDUSTRIAL EXPANSION AND REVITALIZA-
TION AND FOR RESEARCH AND DEVELOP-
MENT PROJECTS.**

§11-13D-3a. Application of credit after June 30, 1987.

§11-13D-8. Prior industrial expansion credit preserved.

§11-13D-3a. Application of credit after June 30, 1987.

1 On and after the first day of July, one thousand nine
2 hundred eighty-seven, the credits allowed under section
3 three shall be applied to and reduce the taxes imposed
4 by articles thirteen, thirteen-a, fifteen, fifteen-a and
5 twenty-three of this chapter: *Provided*, That this credit
6 shall not reduce the sum of the net tax liability of the
7 taxpayer under articles thirteen, thirteen-a and twenty-
8 three of this chapter, or under articles fifteen and
9 fifteen-a of this chapter on purchases directly used or
10 consumed in taxpayer's qualified investment activity,
11 for the taxable year below fifty percent of the amount
12 thereof, determined before application of the credits
13 allowed by this article and article thirteen-c or thirteen-
14 e, or both, of this chapter.

§11-13D-8. Prior industrial expansion credit preserved.

1 Any tax credit which an industrial taxpayer was
2 legally entitled to claim under article thirteen-c of this
3 chapter prior to its repeal effective the first day of
4 March, one thousand nine hundred eighty-five, shall be
5 fully and completely preserved under the provisions of
6 this article for the remainder of the ten year credit
7 period that was then in existence under said article
8 thirteen-c.

**ARTICLE 13E. BUSINESS AND OCCUPATION TAX CREDIT FOR
COAL LOADING FACILITIES.**

§11-13E-3a. Application of credit after June 30, 1987.

1 On and after the first day of July, one thousand nine
2 hundred eighty-seven, the credits allowed under section
3 three shall be applied to and reduce the taxes imposed
4 by articles thirteen, thirteen-a, fifteen, fifteen-a and

5 twenty-three of this chapter: *Provided*, That this credit
6 shall not reduce the sum of the net tax liability of the
7 taxpayer under articles thirteen, thirteen-a and twenty-
8 three of this chapter, or under articles fifteen and
9 fifteen-a of this chapter on purchases directly used or
10 consumed in taxpayer's qualified investment activity,
11 for the taxable year below fifty percent of the amount
12 thereof, determined before application of the credits
13 allowed by this article and article thirteen-c or thirteen-
14 d, or both, of this chapter.

CHAPTER 133

(Com. Sub. for S. B. 276—By Senator Jones)

[Passed March 9, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six, fifteen, seventeen and eighteen, article one-b, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article one-b by adding thereto a new section, designated section nineteen, all relating to the review of statewide property appraisals for ad valorem tax purposes; the additional review of such appraisals; notice of the appraised values of real property to the owners thereof by the tax commissioner; prescribing certain procedures with respect to any such notices returned as undeliverable because of lack of proper address; the duties of the sheriff and the assessor with respect to such return notices; requiring that such notices be delivered to property owners and the procedures relating thereto; providing for the partial reimbursement of the sheriff and the assessor by the county commission of certain costs incurred in connection therewith upon certain certifications by the tax commissioner; clarifying that values upon properties shall not be invalidated because of the owner's failure to receive such notice and providing review by the board of equalization and review in such cases; providing a procedure for review with respect to properties the values of which have been

changed by the tax commissioner or the assessor after the first day of October, one thousand nine hundred eighty-six; the review of such values by the board of equalization and review in the year one thousand nine hundred eighty-eight; requiring the county commission to report to the tax commissioner by the thirtieth day of June, one thousand nine hundred eighty-seven, with respect to certain matters relating to the appeal and review of property values and appraisals for ad valorem taxes; requiring the tax commissioner to provide a summary of such reports to the President of the Senate and the Speaker of the House of Delegates by the fifteenth day of July, one thousand nine hundred eighty-seven; requiring the county commissions to review and determine all appeals which have not been determined by the first day of June, one thousand nine hundred eighty-seven, by the first day of August, one thousand nine hundred eighty-seven; requiring the assessor to adjust and maintain the values of all such property in accordance with regulations provided by the tax commissioner; extending the review of hearings with respect to all such appeals filed by the second day of September, one thousand nine hundred eighty-six, to the first day of May, one thousand nine hundred eighty-seven; extending the period during which determinations may be made with respect to all such hearings to the first day of June, one thousand nine hundred eighty-seven; validating any hearings or determinations, or both, made after the first day of December, one thousand nine hundred eighty-six; requiring the tax commissioner and the assessor to examine the lists of all property subject to ad valorem tax after the final determination on the first day of July, one thousand nine hundred eighty-seven, to determine all properties which are grossly overvalued or undervalued; requiring that such lists be furnished to the county commission no later than the fourth day of January, one thousand nine hundred eighty-eight, for use by the board of equalization and review in February of said year; providing for partial reimbursement of the costs incurred by the assessors in connection with such review by the state tax commissioner; and providing for certain rules of

construction with respect to such amended sections and such new section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1B. ADDITIONAL REVIEW OF PROPERTY APPRAISALS; IMPLEMENTATION.

- §11-1B-6. Notice of appraised values of real property to owner by tax commissioner; content; form.
- §11-1B-15. Right of tax commissioner; assessor or property owner to review of newly discovered matters; limitations.
- §11-1B-17. Report by county commission required; reports to Legislature.
- §11-1B-18. Appraisal of property; date of implementation; assessor to make assessments.
- §11-1B-19. Extending the period for hearings in certain cases; limitations; extending period of final determination; duty of assessor and tax commissioner with respect to certain overvalued or undervalued property; construction of section.

§11-1B-6. Notice of appraised values of real property to owner by tax commissioner; content; form.

- 1 (a) The tax commissioner shall also on or before the
- 2 fifteenth day of August, one thousand nine hundred
- 3 eighty-six, first mail to each owner, a notice of the
- 4 amount of such appraised value of all real property
- 5 subject to ad valorem taxation, as modified or revised.
- 6 Such notice shall be addressed and mailed to the person
- 7 or persons in whose name any and all such real property
- 8 is assessed or was assessed in the year one thousand nine
- 9 hundred eighty-three, or if the property has been
- 10 transferred or replaced upon the tax books of the sheriff,
- 11 then at the name and address reflected upon the tax
- 12 tickets in the office of the sheriff of the county wherein
- 13 such property is located. If such address be unknown to
- 14 the tax commissioner, an alphabetical listing of such
- 15 properties shall be forwarded to such sheriff on or
- 16 before the fifteenth day of June, one thousand nine
- 17 hundred eighty-six, and such sheriff shall provide the
- 18 appropriate mailing address for each such property in

19 the list, such completed list to be returned to the tax
20 commissioner on or before the first day of July, one
21 thousand nine hundred eighty-six.

22 (b) Any notice returned by the post office as undeliv-
23 erable or returned to the tax department for lack of
24 address shall be forwarded to the office of the sheriff
25 of the county. The sheriff shall cause such notices to be
26 delivered by certified mail, or in any manner reasonably
27 designed to ensure that such property owners will be
28 properly notified. It is the duty of the county assessors
29 to assist in the discovery of proper mailing addresses
30 necessary in order that appraisal notices may be
31 delivered in a timely fashion. Any additional expenses
32 or costs incurred by the sheriff or the assessor, or both,
33 in completing the duties assigned to each by the
34 provisions of this subsection shall be paid or reimbursed
35 by the county commission upon certification by the tax
36 commissioner to the county commission as to the amount
37 and the reasonableness thereof.

38 (c) The notice required to be mailed by the provisions
39 of subsection (a) of this section shall be upon uniform
40 forms prepared by the tax commissioner and shall be
41 of simple and readily understandable language and
42 design. The notice shall advise each property owner that
43 (i) an additional opportunity and final period of review
44 is being afforded to request a review of the appraised
45 value of the real property before the county commission
46 prior to the final implementation of such values for ad
47 valorem tax purposes, (ii) that an application or request
48 for such review must be filed with the county commis-
49 sion not later than the second day of September, one
50 thousand nine hundred eighty-six, (iii) that all property
51 owners have a right to petition for review of the value
52 placed upon such property irrespective of whether such
53 owners had previously petitioned for review by the
54 county commission which had finally determined such
55 value or whether such review process was currently
56 pending either before the county commission or upon
57 certiorari before the circuit court as provided in section
58 eighteen, article one-a of this chapter, (iv) that the
59 information and data relied upon in making the

60 appraisal and in fixing the value of such property is
 61 available in the office of the county assessor at no cost
 62 to the property owner or other interested persons, (v)
 63 that such owner may in his or her petition or at any
 64 hearing held thereon, in addition to those matters
 65 relative to the reappraisal, present such factors or
 66 circumstances as, in the judgment of the owner, may
 67 have resulted in either an increase or decrease in the
 68 value of the property in question since the appraisal, and
 69 (vi) the description of the property which shall include,
 70 but not be limited to, the acreage and general landbook
 71 description on the landbook. Such factors or circumstan-
 72 ces may be taken into consideration by the county
 73 assessor or county commission in fixing the assessed
 74 value thereof for the tax year for which a lien attaches
 75 on the first day of July, one thousand nine hundred
 76 eighty-seven: *Provided*, That such factors shall have no
 77 bearing upon the issues involved in establishing the true
 78 value of such property as established by the appraisal.
 79 Such notice shall include the information hereinbefore
 80 required, and for notices affecting surface real property
 81 values, shall set forth at least the following information
 82 in the form shown or as near thereto as may be
 83 practicable:

84

85

"NOTICE

86

87

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YOU ARE HEREBY NOTIFIED OF THE VALUE
 PLACED UPON YOUR PROPERTY WHICH
 IS IDENTIFIED BELOW. THIS VALUE RE-
 SULTS FROM THE REAPPRAISAL OF ALL
 PROPERTY SUBJECT TO PROPERTY TAX AS
 REQUIRED BY THE STATE CONSTITUTION.
 COUNTY _____ DIST _____ MAP
 _____ PARCEL _____ SPID _____ PROP-
 ERTY LOCATION: (Including address) _____
 _____ DATE _____
 TAX CLASS: _____ ACCOUNT NO. _____
 NOTICE: _____
 OWNERS NAME _____
 MAILING ADDRESS _____
 CITY, STATE, ZIP _____

101 DEAR PROPERTY OWNER,
 102 IN COMPLIANCE WITH THE PROVISIONS OF
 103 THE WEST VIRGINIA STATE CONSTITUTION,
 104 ALL PROPERTY HAS BEEN REAPPRAISED
 105 BASED ON FAIR MARKET VALUE AS OF JULY,
 106 1983.

107 STATE LAW REQUIRES THAT ALL ASSESS-
 108 MENTS BE 60% OF FAIR MARKET VALUE AND
 109 THAT ANY INCREASES IN ASSESSMENTS BE
 110 PHASED-IN OVER A 10-YEAR PERIOD.

111 FOLLOWING ARE THE RESULTS OF THE RE-
 112 VALUATION AND THE ESTIMATED TAX IM-
 113 PACT FOR THE PROPERTY LISTED ABOVE.

114 YOUR PROPERTY'S 1983
 115 MARKET/VALUE = \$ _____
 116 X60%
 117 ASSESSMENT VALUE..... = \$ _____
 118 LESS YOUR CURRENT
 119 ASSESSED VALUE = \$ _____
 120 DIFFERENCE IN VALUE = \$ _____

121 ASSUMING THE TAX RATES IN YOUR COUNTY
 122 DO NOT CHANGE AND ALSO ASSUMING THAT
 123 THERE HAVE BEEN NO CHANGES IN YOUR
 124 PROPERTY SINCE 1983, YOUR CURRENT AS-
 125 SESSED VALUE OF \$ _____ WILL BE IN-
 126 CREASED TO \$ _____ FOR THE YEAR
 127 _____ AND WILL BE INCREASED \$ _____
 128 EACH YEAR THEREAFTER FOR A TOTAL PE-
 129 RIOD OF TEN YEARS. BASED ON CURRENT
 130 ASSESSMENTS YOUR TAX FOR THE NEXT
 131 YEAR WILL BE \$ _____. IF YOUR ASSESSOR
 132 DETERMINES THAT YOUR PROPERTY HAS THE
 133 SAME VALUATION AS IN 1983, AND THAT THE
 134 LEVY RATES REMAIN THE SAME, THEN IN
 135 THAT EVENT YOUR TAX THE TENTH YEAR
 136 WILL BE \$ _____. THE VALUES, ASSESS-
 137 MENTS AND AMOUNT OF TAXES SHOWN
 138 ABOVE DO NOT INCLUDE OR TAKE INTO AC-
 139 COUNT ANY CREDIT FOR THE HOMESTEAD
 140 EXEMPTION. IF YOU ARE ELIGIBLE FOR THE

141 HOMESTEAD EXEMPTION, NEXT YEAR'S PROP-
142 ERTY TAX SHOULD BE REDUCED OR
143 ELIMINATED.

144 THE VALUES SHOWN ABOVE DO NOT IN-
145 CLUDE OR REFLECT ANY INCREASES OR DE-
146 CREASES IN VALUE BECAUSE OF REPLACE-
147 MENT, ADDITIONS OR OTHER FACTORS OR
148 CIRCUMSTANCES OCCURRING SINCE 1983.

149 IF YOU DISAGREE WITH THE VALUE PLACED
150 UPON THE ABOVE DESCRIBED PROPERTY OR
151 IF YOU BELIEVE CHANGES HAVE OCCURRED
152 IN SUCH PROPERTY SINCE 1983 WHICH WOULD
153 IN YOUR OPINION REDUCE THE VALUE OF
154 YOUR PROPERTY, THEN YOU SHOULD PETI-
155 TION THE COUNTY COMMISSION FOR REVIEW."

156 (d) In addition to any other notice required to be given
157 to property owners by any provisions of this article, the
158 sheriff shall give or provide a notice which shall advise
159 the property owners of the fact that the right to petition
160 for review of the value will expire on the second day of
161 September, one thousand nine hundred eighty-six, that
162 such petition must be filed or presented to the county
163 commission on or before that date, and that no such
164 petition shall be received thereafter. Such notice shall
165 be included as a separate document within the same
166 envelope in which tax tickets are mailed, or be delivered
167 with such tax tickets to property owners pursuant to
168 section eight, article one, chapter eleven-a of this code.

169 (e) The fact that an owner failed to receive any notice
170 pursuant to the provisions of this article shall not affect
171 the right of the property owner to petition for review
172 within the time prescribed, and shall not extend the
173 period by or during which any such petition is permitted
174 to be filed, as provided by this article, nor serve to toll
175 the time by which any such petition is required to be
176 filed, nor invalidate any value otherwise correct:
177 *Provided*, That nothing herein shall be construed to
178 limit the rights and remedies provided in article three,
179 chapter eleven: *Provided, however*, That the failure to
180 receive notice shall give rise to review under section
181 twenty-four, article three of chapter eleven.

182 (f) The sheriff, assessor, clerk of the county commis-
183 sion and all other county officers shall cooperate and
184 assist the tax commissioner in locating and ascertaining
185 proper, correct and current addresses of all owners of
186 property subject to ad valorem taxes in order that the
187 mailing of the notices required by the provisions of this
188 section or of any other provision of this article may
189 achieve the greatest degree of proficient and accurate
190 delivery.

191 (g) Nothing in this article shall be construed to
192 diminish to any extent any responsibility on the part of
193 any property owner or taxpayer to see to the proper,
194 accurate and timely return of any property required to
195 be returned or to see that any such property is assessed
196 and taxed according to law and to the extent provided
197 by law.

**§11-1B-15. Right of tax commissioner, assessor or prop-
erty owner to review of newly discovered
matters; limitations.**

1 (a) The tax commissioner, the assessor or any prop-
2 erty owner at any time after the second day of Sep-
3 tember, one thousand nine hundred eighty-six, and
4 before the first day of October of said year shall have
5 the right to petition the county commission to reopen
6 and review in accordance with the provisions of this
7 article. In the event the tax commissioner or assessor so
8 petitions the county commission, the owner of the
9 property shall forthwith be notified of the petition by
10 mailing or delivering a true copy thereof to such owner.
11 Similarly, if the owner petitions the county commission
12 in accordance herewith, he or she shall likewise notify
13 the tax commissioner and the assessor of that fact. It
14 shall be the affirmative burden of the petitioning party
15 to clearly show that the matters raised in the petition
16 were newly discovered since the first day of September,
17 one thousand nine hundred eighty-six, and were theret-
18 ofore unknown to the parties so petitioning.

19 (b) The assessor shall petition the county commission
20 to adjust the appraised value of any parcel where that
21 value appears to be clearly in error or based upon

22 inconsistencies in valuation procedures, trends in
23 valuation, clerical errors or other cause. Notice of any
24 petition filed by the assessor shall be given to any
25 affected owner and the tax commissioner. A hearing
26 held pursuant to such petition shall be governed by the
27 same procedures described for review and hearings as
28 provided for in section eight of this article.

29 (c) In the event the tax commissioner or assessor
30 changes the base year value of property as a result of
31 matters discovered subsequent to October one, one
32 thousand nine hundred eighty-six, the owner of the
33 property shall forthwith be notified of the change by
34 mailing or delivering a notice thereof to such owner. The
35 owner has forty-five days from the date on the notifi-
36 cation to file an objection in writing with the county
37 commission. The county commission may only hear and
38 determine the matter when meeting after the year one
39 thousand nine hundred eighty-seven for the purpose of
40 reviewing and equalizing in accordance with section
41 twenty-four, article three of this chapter.

**§11-1B-17. Report by county commission required;
reports to Legislature.**

1 The county commission shall make a report to the tax
2 commissioner on or before the thirtieth day of June, one
3 thousand nine hundred eighty-seven, of the number of
4 hearings held by it in review of any and all appraisals
5 and any adjustments in valuation made by the county
6 commission. The tax commissioner shall provide a
7 summary of such reports to the President of the Senate
8 and the Speaker of the House of Delegates on or before
9 the fifteenth day of July, one thousand nine hundred
10 eighty-seven.

**§11-1B-18. Appraisal of property; date of implementa-
tion; assessor to make assessments.**

1 (a) All property as defined in section three of this
2 article shall be appraised at its true and actual value
3 as that term is defined in subsection (i), section three,
4 article one-a of this chapter.

5 (b) County commissions shall proceed in a timely

6 manner to hold the review hearings and issue determi-
7 nations in accordance with the provisions of this article
8 and the guidelines and regulations of the tax commis-
9 sioner. If all hearings have not been held, or completed,
10 or determinations thereon have not been issued, by the
11 first day of June, one thousand nine hundred eighty-
12 seven, the tax commissioner shall deem the values
13 appealed from, and the results thereof, substantially
14 correct and the review procedures substantially compl-
15 ied with, for purposes of subsection (c) of this section.
16 In such instances, the county commission shall proceed
17 to hold review hearings and issue determinations in
18 accordance with the provisions of this article and the
19 guidelines and regulations of the tax commissioner, and
20 shall complete all hearings and issue all determinations
21 on or before the first day of August, one thousand nine
22 hundred eighty-seven, at which time it is the duty of the
23 county commissions to have all hearings held and
24 completed, all determinations issued, and the results
25 thereof reported to the tax commissioner.

26 (c) Upon completion of the review procedures pro-
27 vided in this article, and after certification by the tax
28 commissioner to the Governor, President of the Senate
29 and Speaker of the House of Delegates that, with the
30 exception of those matters pending under subsection (b)
31 of this section or in the circuit courts of this state or on
32 appeal to the supreme court of appeals, said review
33 procedures have been substantially complied with and
34 further that the results thereof are substantially correct,
35 the final valuations arrived at, by, and through the
36 appraisal process to establish value of all property for
37 the year one thousand nine hundred eighty-three, as
38 provided for in article one-a of this chapter and by this
39 article, shall be and the same are hereby directed to be
40 used for ad valorem property taxation in the year for
41 which lien would attach on the first day of July, one
42 thousand nine hundred eighty-seven. Such valuations
43 shall be adjusted and maintained by the assessor in
44 accordance with regulations governing the appraisal of
45 property for property tax purposes and instructions
46 provided by the state tax commissioner to reflect
47 consideration of such substitutions, alterations, accre-

48 tions, improvements, additions, replacements, destruc-
49 tions, removals, casualties, acts of God, waste or like
50 occurrences or circumstances, as well as economic and
51 other factors which result in or cause an increase or
52 decrease in the value of any such property or any other
53 divisions, redivision or other change in such property
54 since its reappraisal for the year one thousand nine
55 hundred eighty-three.

56 In the implementation of such values, the assessor of
57 each of the several counties shall assess the property
58 subject to ad valorem taxation (other than public utility
59 property) in the manner and subject to the procedures
60 for return, assessment, equalization and review hereto-
61 fore provided in this code, at sixty percent of the market
62 value less such exemptions and allowance for phase-in
63 which may be applicable.

64 With respect to property, the market value of which
65 has changed since the reappraisal, the assessor shall
66 enter on the computer network provided for by section
67 twenty-one, article one-a of this chapter, the basis of any
68 change in value utilized in such assessment.

69 With respect to property not subject to reappraisal at
70 the time of the reappraisal, or property on which
71 improvements have been made, the assessor shall use as
72 a basis for phase-in of the reappraisal, the statewide
73 phase-in rate promulgated by the tax commissioner for
74 like property.

75 (d) The tax commissioner shall be provided by the
76 assessor with any information, findings, or reasons
77 relied upon by the assessor in increasing or decreasing
78 values as a result of economic or other factors if applied
79 by the assessor to any species or class of property
80 generally or uniformly.

§11-1B-19. Extending the period for hearings in certain cases; limitations; extending period of final determination of certain cases; validation of certain determinations; duty of assessor and tax commissioner with respect to certain overvalued or undervalued property; construction of section.

1 (a) The provisions of section twelve of this article or

2 of any other provision of this article to the contrary
3 notwithstanding, the period during which the final
4 determination by the county commission in any matter
5 upon or in which a petition for review of the appraised
6 value of any taxable property was timely filed under the
7 provisions of either section eight or fifteen of this article
8 or any other provision thereof, was to be finally
9 determined is hereby extended to and through the first
10 day of June, one thousand nine hundred eighty-seven.
11 The time period during which hearings may be con-
12 ducted with respect to any such timely-filed petitions for
13 review is hereby extended until and through the first
14 day of May, one thousand nine hundred eighty-seven,
15 with respect to those matters in which hearings have not
16 been previously concluded prior to the effective date of
17 this section. Further, in any such matter in which the
18 petition for review had been filed timely and in which
19 either the hearing or the final determination or both was
20 held or shall be made after the first day of December,
21 one thousand nine hundred eighty-six, such determina-
22 tion shall nonetheless be deemed timely heard or
23 determined for all intents and purposes, including, but
24 not limited to, the intents and purposes of this article.

25 (b) After the final determination of values has been
26 made in accordance with the provision of subsection (a)
27 of this section and the results certified for use in the tax
28 year for which the ad valorem tax lien attaches on the
29 first day of July, one thousand nine hundred eighty-
30 seven, the assessor and the tax commissioner shall
31 review the list of all property subject to ad valorem
32 taxation (and it shall be the joint, several and co-existing
33 duty of the assessor and the tax commissioner so to do)
34 for the purpose of ascertaining, identifying and listing
35 any and all items of such property which are obviously
36 grossly or significantly overvalued or undervalued;
37 which list, together with their recommendation as to the
38 true and actual value of each such item of such property,
39 shall be certified to the county commission not later than
40 the fourth day of January, in the year one thousand nine
41 hundred eighty-eight, for the use and consideration of
42 the respective boards of equalization and review in
43 February of that year. The assessor shall be reimbursed

44 by the state tax department in an amount not to exceed
45 seventy-five percent of the costs and expenses incurred
46 by the assessor in the review of such lists and the
47 preparation and certification of such report to the board
48 of equalization and review: *Provided*, That prior
49 approval of the tax commissioner is obtained in advance
50 of the incurring of such costs or expenses. The percen-
51 tage of reimbursement as to each assessor shall be of a
52 uniform amount as to all assessors.

53 (c) The provisions of section fourteen of this article
54 shall apply to any matter decided or validated pursuant
55 to this section, as shall the provisions of section eighteen,
56 article one-a of this chapter, to the extent the same are
57 not in conflict with this section.

58 (d) All other provisions of this article enacted by the
59 Legislature, at the first extraordinary session thereof
60 held in the year one thousand nine hundred eighty-six
61 which are not in conflict with this section shall apply
62 to all matters, circumstances and situations which may
63 be subject to this article, and to the extent of any such
64 conflict, the provisions of this section shall apply.

CHAPTER 134

(S. B. 558—By Senator Tonkovich, Mr. President)

[Passed March 11, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT to amend and reenact section nine, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to property exempt from ad valorem taxation; property held by any college or university located in West Virginia or any nonprofit foundation or corporation which receives contributions on behalf of any such college or university.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ASSESSMENTS GENERALLY.**§11-3-9. Property exempt from taxation.**

1 All property, real and personal, described in this
2 section, and to the extent herein limited, shall be exempt
3 from taxation, that is to say: Property belonging to the
4 United States, other than property permitted by the
5 United States to be taxed under state law; property
6 belonging exclusively to the state; property belonging
7 exclusively to any county, district, city, village or town
8 in this state, and used for public purposes; property
9 located in this state, belonging to any city, town, village,
10 county or any other political subdivision of another state,
11 and used for public purposes; property used exclusively
12 for divine worship; parsonages, and the household goods
13 and furniture pertaining thereto; mortgages, bonds and
14 other evidence of indebtedness in the hands of bona fide
15 owners and holders hereafter issued and sold by
16 churches and religious societies for the purposes of
17 securing money to be used in the erection of church
18 buildings used exclusively for divine worship, or for the
19 purpose of paying indebtedness thereon; cemeteries;
20 property belonging to, or held in trust for, colleges,
21 seminaries, academies and free schools, if used for
22 educational, literary or scientific purposes, including
23 books, apparatus, annuities and furniture; property
24 belonging to, or held in trust for, colleges or universities
25 located in West Virginia, or any public or private
26 nonprofit foundation or corporation which receives
27 contributions exclusively for such college or university,
28 if the property or dividends, interest, rents or royalties
29 derived therefrom are used or devoted to educational
30 purposes of such college or university; public and family
31 libraries; property used for charitable purposes, and not
32 held or leased out for profit; property used for the public
33 purposes of distributing water or providing sewer
34 service by a duly chartered nonprofit corporation when
35 such property is not held, leased out or used for profit;
36 property used for area economic development purposes
37 by nonprofit corporations when such property is not
38 leased out for profit; all real estate not exceeding one-
39 half acre in extent, and the buildings thereon, and used

40 exclusively by any college or university society as a
41 literary hall, or as a dormitory or clubroom, if not leased
42 or otherwise used with a view to profit; all property
43 belonging to benevolent associations, not conducted for
44 private profit; property belonging to any public institu-
45 tion for the education of the deaf, dumb or blind, or any
46 hospital not held or leased out for profit; house of refuge,
47 lunatic or orphan asylum; homes for children or for the
48 aged, friendless or infirm, not conducted for private
49 profit; fire engines and implements for extinguishing
50 fires, and property used exclusively for the safekeeping
51 thereof, and for the meeting of fire companies; all
52 property on hand to be used in the subsistence of
53 livestock on hand at the commencement of the assess-
54 ment year; household goods to the value of two hundred
55 dollars, whether or not held or used for profit; bank
56 deposits and money; household goods (which term is
57 deemed for purposes of this section to mean only
58 personal property and household goods commonly found
59 within the house and items used to care for the house
60 and its surrounding property) when not held or used for
61 profit, and personal effects (which term is deemed for
62 purposes of this section to mean only articles and items
63 of personal property commonly worn on or about the
64 human body, or carried by a person and normally
65 thought to be associated with the person) when not held
66 or used for profit; dead victuals laid away for family use
67 and any other property or security exempted by any
68 other provision of law; but no property shall be exempt
69 from taxation which shall have been purchased or
70 procured for the purpose of evading taxation, whether
71 temporarily holding the same over the first day of the
72 assessment year or otherwise: *Provided*, That real
73 property which is exempt from taxation by this section
74 shall be entered upon the assessor's books, together with
75 the true and actual value thereof, but no taxes shall be
76 levied upon the same or extended upon the assessor's
77 books.

78 Notwithstanding any other provisions of this section,
79 however, no language herein shall be construed to
80 exempt from taxation any property owned by, or held
81 in trust for, educational, literary, scientific, religious or

82 other charitable corporations or organizations, including
83 any public or private nonprofit foundation or corpora-
84 tion existing for the support of any college or university
85 located in West Virginia, unless such property, or the
86 dividends, interest, rents or royalties derived therefrom,
87 is used primarily and immediately for the purposes of
88 such corporations or organizations.

89 The tax commissioner shall, by issuance of regula-
90 tions, provide each assessor with guidelines to ensure
91 uniform assessment practices statewide to effect the
92 intent of this section.

CHAPTER 135

(H. B. 2890—By Delegate Rollins)

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

AN ACT to amend article five, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen, relating to ad valorem property taxation; exempting certain tangible personal property comprising inventory and warehouse goods from such taxation when such property is in transit; listing conditions when such property shall and shall not be deprived of such exemption; providing that such exemption shall not apply to certain inventories; and requiring phase-in of exemption.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.

§11-5-13. Exemption of inventory and warehouse goods.

- 1 (a) Tangible personal property which is moving in
- 2 interstate commerce through or over the territory of the

3 state of West Virginia, or which was consigned from a
4 point of origin outside the state to a warehouse, public
5 or private, within the state for storage in transit to a
6 final destination outside the state, whether specified
7 when transportation begins or afterward, but in any
8 case specified timely for exempt status determination
9 purposes, shall not be deemed to have acquired a tax
10 situs in West Virginia for purposes of ad valorem
11 taxation and shall be exempt from such taxation, except
12 as otherwise provided herein.

13 (b) Such property shall not be deprived of such
14 exemption because while in the warehouse the personal
15 property is assembled, bound, joined, processed, disas-
16 sembled, divided, cut, broken in bulk, relabeled, or
17 repackaged for delivery out of state, unless such activity
18 results in a new or different product, article, substance
19 or commodity, or one of different utility.

20 (c) Personal property of inventories of natural resour-
21 ces shall not be exempt from ad valorem taxation unless
22 required by paramount federal law.

23 (d) The exemption allowed herein shall be phased in
24 over a period of five consecutive assessment years, at the
25 rate of one fifth of the assessed value of the property per
26 assessment year, beginning the first day of July, one
27 thousand nine hundred eighty-seven.

CHAPTER 136

(H. B. 2275—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

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

AN ACT to amend and reenact sections three and five, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to registration of businesses under the business registration tax; providing civil penalties for noncompliance; providing an effective date; time for

which registration certificate granted; power of tax commissioner to suspend or cancel certificate; refusal to renew; and farmers not required to register or pay tax.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-3. Business registration certificate required; tax levied; exemption from registration; exemption from tax; effective date.

§11-12-5. Time for which registration certificate granted; power of tax commissioner to suspend or cancel certificate; refusal to renew.

§11-12-3. Business registration certificate required; tax levied; exemption from registration; exemption from tax; effective date.

1 (a) *Registration required.* — No person shall, without
2 a business registration certificate, engage in or prose-
3 cute, in the state of West Virginia, any business activity
4 without first obtaining a business registration certifi-
5 cate from the tax commissioner of the state of West
6 Virginia. Additionally, before beginning business in this
7 state, such person:

8 (1) If a transient vendor, shall comply with the
9 provisions of sections twenty through twenty-five of this
10 article.

11 (2) If a collection agency, shall comply with the
12 provisions of article sixteen, chapter forty-seven of this
13 code.

14 (3) If an employment agency, shall comply with the
15 provisions of article two, chapter twenty-one of this code.

16 (4) If selling drug paraphernalia, as defined in section
17 three, article nineteen, chapter forty-seven of this code,
18 shall comply with the provisions of article nineteen,
19 chapter forty-seven of this code.

20 Persons engaging in or prosecuting other business
21 activities in this state may also be subject to other

22 provisions of this code which they must satisfy before
23 commencing or while engaging in a business activity in
24 this state.

25 (b) *Tax levied.* — The business registration tax hereby
26 levied shall be fifteen dollars for each business registra-
27 tion certificate.

28 (1) A separate business registration certificate is
29 required for each fixed business location from which
30 property or services are offered for sale or lease to the
31 public as a class, or to a limited portion of the public;
32 or at which customer accounts may be opened, closed or
33 serviced.

34 (2) A separate business registration certificate is not
35 required for each coin-operated machine. A separate
36 certificate is required for each location from which
37 making coin-operated machines available to the public
38 is itself a business activity.

39 (3) A business that sells tangible personal property or
40 services from or out of one or more vehicles needs a
41 separate business registration certificate for each fixed
42 location in this state from or out of which business is
43 conducted. A copy of its business registration certificate
44 shall be carried in each vehicle and publicly displayed
45 while business is conducted from or out of the vehicle.

46 (4) A business registration certificate is required by
47 subsection (a) for every person engaging in purposeful
48 revenue generating activity in this state. If that activity
49 is one for which an employment agency license or a
50 collection agency license or a license to sell drug
51 paraphernalia is required and no other business activity
52 is conducted by that person at each business location for
53 which the employment agency license or collection
54 agency license or license to sell drug paraphernalia is
55 issued, then only that license is required for each such
56 activity conducted by the licensee at each business
57 location. However, if, in addition to the activity for
58 which each license is issued, some other business activity
59 is conducted by the licensee at such business location,
60 a separate business registration certificate is required
61 to conduct the nonlicensed activity.

62 (c) Exemption from registration. — Any person
63 engaging in or prosecuting business activity in this
64 state:

65 (1) Who is not required by law to collect or withhold
66 a tax administered under article ten of this chapter; and

67 (2) Who does not claim exemption from payment of
68 taxes imposed by articles fifteen and fifteen-a of this
69 chapter, shall be exempt from both registration and
70 payment of the tax imposed by this article, if such
71 person had gross income from business activity of four
72 thousand dollars or less during that person's tax year
73 for state income tax purposes immediately preceding
74 the registration year for which a registration certificate
75 is otherwise required by this article.

76 (d) *Exemptions from payment of tax.* — Any person
77 engaging in or prosecuting any business activity in this
78 state who is required by law to collect or withhold any
79 tax administered under article ten of this chapter; or
80 who claims exemption from payment of the taxes
81 imposed by articles fifteen and fifteen-a of this chapter,
82 shall be required to obtain a business registration
83 certificate, as herein before provided, but shall be
84 exempt from payment of the tax levied by subsection (b),
85 if such person is:

86 (1) A person who had gross income from business
87 activity of four thousand dollars or less during that
88 person's tax year for state income tax purposes imme-
89 diately preceding the registration year for which a
90 registration certificate is required under this article.

91 (2) An organization which qualifies, or would qualify,
92 for exemption from federal income taxes under section
93 501 of the Internal Revenue Code of 1986, as amended.

94 (3) This state, or a political subdivision thereof, selling
95 tangible personal property, admissions or services, when
96 those activities compete with or may compete with the
97 activities of another person.

98 (4) The United States, or an agency or instrumentality
99 thereof, which is exempt from taxation by the states.

100 (5) A person engaged in the business of agriculture
101 and farming: *Provided*, That no producer or grower
102 selling products of the farm, garden or dairy and not
103 included within the definition of business under subsec-
104 tion (a), section two of this article shall be required to
105 obtain a business registration certificate or pay the
106 business registration tax.

107 (6) A foreign retailer who is not a "retailer engaging
108 in business in this state" as defined in section one, article
109 fifteen-a of this chapter, who enters into an agreement
110 with the tax commissioner to voluntarily collect and
111 remit use tax on sales to West Virginia customers.

112 (e) *Money penalty.* — Any person required to obtain
113 a business registration certificate under this section,
114 who is exempt from payment of the tax, as provided in
115 subsection (d), who does not obtain a registration
116 certificate shall, in lieu of paying the penalty imposed
117 by section nine, pay a penalty of fifteen dollars for each
118 business location for which a certificate is needed:
119 *Provided*, That application for business registration is
120 made and the applicable money penalty tendered to the
121 tax commissioner within fifteen days after such person
122 receives written notice from the tax commissioner that
123 such person is required to obtain a business registration
124 certificate.

125 (f) *Effective date.* — The provisions of this section, as
126 amended, shall apply to all businesses beginning the
127 first day of July, one thousand nine hundred eighty-
128 seven.

**§11-12-5. Time for which registration certificate granted;
power of tax commissioner to suspend or
cancel certificate; refusal to renew.**

1 (a) *Registration year.* — All business registration
2 certificates issued under the provisions of section four
3 of this article shall be for the period of one year
4 beginning the first day of July and ending the thirtieth
5 day of the following June.

6 (b) *Revocation or suspension of certificate.*

7 (1) The tax commissioner may cancel or suspend a

8 business registration certificate at any time during a
9 registration year if:

10 (A) The registrant filed an application for a business
11 registration certificate, or an application for renewal
12 thereof, for the registration year that was false or
13 fraudulent.

14 (B) The registrant willfully refused or neglected to
15 file a tax return or to report information required by
16 the tax commissioner for any tax imposed by or
17 pursuant to this chapter.

18 (C) The registrant willfully refused or neglected to
19 pay any tax, additions to tax, penalties or interest, or
20 any part thereof, when they became due and payable
21 under this chapter, determined with regard to any
22 authorized extension of time for payment.

23 (D) The registrant neglected to pay over to the tax
24 commissioner on or before its due date, determined with
25 regard to any authorized extension of time for payment,
26 any tax imposed by this chapter which the registrant
27 collects from any person and holds in trust for this state.

28 (E) The registrant abused the privilege afforded to it
29 by article fifteen or fifteen-a of this chapter to be
30 exempt from payment of the taxes imposed by such
31 articles on some or all of the registrant's purchases for
32 use in business upon issuing to the vendor a properly
33 executed exemption certificate, by failing to timely pay
34 use tax on taxable purchase for use in business, or by
35 failing to either pay the tax or give a properly executed
36 exemption certificate to the vendor.

37 (2) Before cancelling or suspending any such certifi-
38 cate, the tax commissioner shall give written notice of
39 his intent to suspend or cancel the business registration
40 certificate of the taxpayer, the reason for the suspension
41 or cancellation, the effective date of the cancellation or
42 suspension, and the date, time and place where the
43 taxpayer may appear and show cause why such business
44 registration certificate should not be cancelled or
45 suspended. This written notice shall be served on the
46 taxpayer in the same manner as a notice of assessment

47 is served under article ten of this chapter, not less than
48 twenty days prior to the date of such show cause
49 informal hearing. The taxpayer may appeal cancellation
50 or suspension of its business registration certificate in
51 the same manner as a notice of assessment is appealed
52 under article ten of this chapter: *Provided*, That the
53 filing of a petition for appeal shall not stay the effective
54 date of the suspension or cancellation. A stay may be
55 granted only after a hearing is held on a motion to stay
56 filed by the registrant, upon finding that state revenues
57 will not be jeopardized by the granting of the stay. The
58 tax commissioner may, in his discretion and upon such
59 terms as he may specify, agree to stay the effective date
60 of the cancellation or suspension until another date
61 certain.

62 (c) *Refusal to renew.* — The tax commissioner may
63 refuse to issue or renew a business registration certifi-
64 cate if the registrant is delinquent in the payment of
65 any tax administered by the tax commissioner under
66 article ten of this chapter or the corporate license tax
67 imposed by this article, until the registrant pays in full
68 all such delinquent taxes including interest and appli-
69 cable additions to tax and penalties. In his discretion
70 and upon such terms as he may specify, the tax
71 commissioner may enter into an installment payment
72 agreement with such taxpayer in lieu of the complete
73 payment. Failure of the taxpayer to fully comply with
74 the terms of the installment payment agreement shall
75 render the amount remaining due thereunder imme-
76 diately due and payable and the tax commissioner may
77 suspend or cancel the business registration certificate in
78 the manner hereinbefore provided.

CHAPTER 137

(S. B. 310—By Senator Shaw)

[Passed March 13, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT to amend and reenact section two-d, article thirteen,
chapter eleven of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to the business and occupation tax imposed on public service or utility businesses; and exempting sales of electricity consumed in the manufacture of a ferroalloy from taxation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

***§11-13-2d. Public service or utility business.**

1 (a) Upon any person engaging or continuing within
2 this state in any public service or utility business, except
3 railroad, railroad car, express, pipeline, telephone and
4 telegraph companies, water carriers by steamboat or
5 steamship and motor carriers, there is likewise hereby
6 levied and shall be collected taxes on account of the
7 business engaged in equal to gross income of the
8 business multiplied by the respective rates as follows:

9 (1) Street and interurban and electric railways, one
10 and four-tenths percent;

11 (2) Water companies, four and four-tenths percent,
12 except as to income received by municipally owned
13 water plants;

14 (3) Electric light and power companies, four percent
15 on sales and demand charges for domestic purposes and
16 commercial lighting and four percent on sales and
17 demand charges for all other purposes and commercial
18 lighting and four percent on sales and demand charges
19 for all other purposes, except as to income received by
20 municipally owned plants producing or purchasing
21 electricity and distributing same: *Provided*, That
22 electric light and power companies which engage in the
23 supplying of public service but which do not generate
24 or produce electric power shall be taxed on the gross
25 income derived therefrom at the rate of three percent

* Clerk's Note: This section was also amended by S.B. 536, which passed subsequent to this act.

26 on sales and demand charges for domestic purposes and
27 commercial lighting and three percent on sales and
28 demand charges for all other purposes, except as to
29 income received by municipally owned plants: *Provided,*
30 *however,* That the sale of electric power under this
31 section shall be taxed at the rate of two and forty-six
32 hundredths percent on that portion of the gross proceeds
33 derived from the sale of electric power to a plant
34 location of a customer engaged in a manufacturing
35 activity, if the contract demand at such plant location
36 exceeds two hundred thousand kilowatts per hour per
37 year, or if the usage of such plant location exceeds two
38 hundred thousand kilowatts per hour in a year: *Provided*
39 *further,* That such two and forty-six hundredths percent
40 rate will be reduced to a rate of two and three hundred
41 thirty-seven thousandths percent through occurrence of
42 the contemplated five percent reduction of rates on the
43 first day of July, one thousand nine hundred eighty-five,
44 and with such rate to thereafter, on the first day of July,
45 one thousand nine hundred eighty-seven, become two
46 percent: *And provided further,* That the sale of electric
47 power under this section shall be exempt from the tax
48 imposed by section two if it is separately metered and
49 consumed in an electrolytic process for the manufacture
50 of chlorine in this state, or is separately metered and
51 consumed in the manufacture of a ferroalloy in this
52 state, and the rate reduction herein provided to the
53 taxpayer shall be passed on to the manufacturer of the
54 chlorine or ferroalloy. As used in this section, the term
55 "ferroalloy" means any of various alloys of iron and one
56 or more other elements used as a raw material in the
57 production of steel: *And provided further,* That the term
58 does not include the final production of steel;

59 (4) Natural gas companies, four and twenty-nine
60 hundredths percent on the gross income;

61 (5) Toll bridge companies, four and twenty-nine
62 hundredths percent; and

63 (6) Upon all other public service or utility business,
64 two and eighty-six hundredths percent.

65 (b) The measure of this tax shall not include gross

66 income derived from commerce between this state and
67 other states of the United States or between this state
68 and foreign countries. The measure of the tax under this
69 section shall include only gross income received from the
70 supplying of public service. The gross income of the
71 taxpayer from any other activity shall be included in the
72 measure of the tax imposed upon such other activity by
73 the appropriate section or sections of this article.

CHAPTER 138

(H. B. 3202—By Delegate Farley)

[Passed May 12, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT to repeal section five-a, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five of said article, relating to the consumers sales tax law and disallowing receipt of any discount or reduction in the amount of tax to be remitted and paid by a vendor on the basis that there has been early remittance of such tax by such vendor to the tax commissioner.

Be it enacted by the Legislature of West Virginia:

¹That section five-a, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section five of said article be amended and reenacted, all to read as follows:

ARTICLE 15. CONSUMERS SALES TAX.

²§11-15-5. Total amount collected is to be remitted.

1 No profit shall accrue to any person as a result of the

¹Clerk's Note: Section five-a (§11-15-5a) was enacted as a new section in S. B. 536, which passed prior to this act.

²Clerk's Note: This section was also amended by S. B. 536, which passed prior to this act.

2 collection of the tax levied by this article notwithstand-
3 ing the total amount of such taxes collected may be in
4 excess of the amount for which such person would be
5 liable by the application of the levy of five percent to
6 the gross proceeds of his sales, and the total of all taxes
7 collected by such person shall be returned and remitted
8 to the tax commissioner as hereinafter provided.

CHAPTER 139

(H. B. 2787—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

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

AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to taxation; and providing an exemption from the consumers sales and services tax for items purchased with food stamps.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES TAX.

*§11-15-9. Exemptions.

- 1 The following sales and services shall be exempt:
- 2 (1) Sales of gas, steam and water delivered to consu-
3 mers through mains or pipes, and sales of electricity;
- 4 (2) Sales of textbooks required to be used in any of
5 the schools of this state;

* Clerk's Note: This section was also amended by S. B. 536 and S. B. 760, which passed subsequent to this act.

6 (3) Sales of property or services to the state, its
7 institutions or subdivisions, and to the United States,
8 including agencies of federal, state or local governments
9 for distribution in public welfare or relief work;

10 (4) Sales of motor vehicles which are titled by the
11 department of motor vehicles and which are subject to
12 the tax imposed by section four, article three, chapter
13 seventeen-a of the code;

14 (5) Sales of property or services to churches and bona
15 fide charitable organizations who make no charge
16 whatsoever for the services they render: *Provided*, That
17 the exemption herein granted shall apply only to
18 services, equipment, supplies and materials directly
19 used or consumed by these organizations, and shall not
20 apply to purchases of gasoline or special fuel;

21 (6) Sales of property or services to corporations or
22 organizations qualified under section 501(c)(3) of the
23 Internal Revenue Code of 1954, as amended, or under
24 section 501(c)(4) of the Internal Revenue Code of 1954,
25 as amended, who make casual and occasional sales not
26 conducted in a repeated manner or in the ordinary
27 course of repetitive and successive transactions of like
28 character: *Provided*, That the exemption herein granted
29 shall apply only to services, equipment, supplies and
30 materials directly used or consumed by these organiza-
31 tions and shall not apply to purchases of gasoline or
32 special fuel;

33 (7) Sales of property or services to persons engaged
34 in this state in the business of contracting, manufactur-
35 ing, transportation, transmission, communication or in
36 the production of natural resources: *Provided*, That the
37 exemption herein granted shall apply only to services,
38 machinery, supplies and materials directly used or
39 consumed in the businesses or organizations named
40 above, and shall not apply to purchases of gasoline or
41 special fuel;

42 (8) An isolated transaction in which any tangible
43 personal property is sold, transferred, offered for sale,
44 or delivered by the owner thereof or by his representa-
45 tive for the owner's account, such sale, transfer, offer for

46 sale or delivery not being made in the ordinary course
47 of repeated and successive transactions of like character
48 by such owner or on his account by such representative;

49 (9) Sales of tangible personal property and services
50 rendered for use or consumption in connection with the
51 conduct of the business of selling tangible personal
52 property to consumers or dispensing a service subject to
53 tax under this article or which would be subject to tax
54 under this article but for the exemption for food
55 provided in section eleven of this article and sales of
56 tangible personal property and services rendered for use
57 or consumption in connection with the commercial
58 production of an agricultural product the ultimate sale
59 of which will be subject to the tax imposed by this
60 article or which would have been subject to tax under
61 this article but for the exemption for food provided in
62 section eleven of this article: *Provided*, That sales of
63 tangible personal property and services to be used or
64 consumed in the construction of or permanent improve-
65 ment to real property and sales of gasoline and special
66 fuel shall not be exempt;

67 (10) Sales of tangible personal property for the
68 purpose of resale in the form of tangible personal
69 property: *Provided*, That sales of gasoline and special
70 fuel by distributors and importers shall be taxable
71 except when the sale is to another distributor for resale;

72 (11) Sales of property or services to nationally
73 chartered fraternal or social organizations for the sole
74 purpose of free distribution in public welfare or relief
75 work: *Provided*, That sales of gasoline and special fuel
76 shall be taxable;

77 (12) Sales and services, fire fighting or station house
78 equipment, including construction and automotive,
79 made to any volunteer fire department organized and
80 incorporated under the laws of the state of West
81 Virginia: *Provided*, That sales of gasoline and special
82 fuel shall be taxable;

83 (13) Sales of newspapers when delivered to consumers
84 by route carriers;

- 85 (14) Sales of drugs dispensed upon prescription and
86 sales of insulin to consumers for medical purposes;
- 87 (15) Sales of radio and television broadcasting time,
88 newspaper and outdoor advertising space for the
89 advertisement of goods or services;
- 90 (16) Sales and services performed by day care centers;
- 91 (17) Casual and occasional sales of property or
92 services not conducted in a repeated manner or in the
93 ordinary course of repetitive and successive transactions
94 of like character by corporations or organizations
95 qualified under section 501(c)(3) of the Internal Revenue
96 Code of 1954, as amended, or under section 501(c)(4) of
97 the Internal Revenue Code of 1954, as amended;
- 98 (18) Bank safety deposit boxes;
- 99 (19) Sales of property or services to a school which has
100 approval from the West Virginia board of regents to
101 award degrees, which has its principal campus in this
102 state, and which is exempt from federal and state
103 income taxes under section 501(c)(3) of the Internal
104 Revenue Code of 1954, as amended: *Provided*, That sales
105 of gasoline and special fuel shall be taxable;
- 106 (20) Sales of mobile homes to be utilized by purchas-
107 ers as their principal year-round residence and dwell-
108 ing: *Provided*, That these mobile homes shall be subject
109 to tax at the three percent rate;
- 110 (21) Sales of lottery tickets and materials by licensed
111 lottery sales agents and lottery retailers authorized by
112 the state lottery commission, under the provisions of
113 article twenty-two, chapter twenty-nine of this code;
- 114 (22) Leases of motor vehicles titled pursuant to the
115 provisions of article three, chapter seventeen-a of this
116 code to lessees for a period of thirty or more consecutive
117 days. This exemption shall apply to leases executed on
118 or after the first day of July, one thousand nine hundred
119 eighty-seven, and to payments under long-term leases
120 executed before such date, for months thereof beginning
121 on or after such date; and
- 122 (23) Any sales of tangible personal property or

123 services purchased after the thirtieth day of September,
124 one thousand nine hundred eighty-seven, and lawfully
125 paid for with food stamps pursuant to the federal food
126 stamp program codified in United States Code, 2011, et
127 seq., as amended.

CHAPTER 140

(H. B. 3189—By Delegate Farley)

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

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; relating to the corporation net income tax; providing for updating the meaning of certain terms used in such act to conform with the meaning for federal tax purposes and making such updating retroactive to taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-five.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article shall have the same
2 meaning as when used in a comparable context in the
3 laws of the United States relating to income taxes,
4 unless a different meaning is clearly required. Any
5 reference in this article to the laws of the United States
6 shall mean the provisions of the Internal Revenue Code
7 of 1986, as amended, and such other provisions of the
8 laws of the United States as relate to the determination
9 of income for federal income tax purposes. All amend-
10 ments made to the laws of the United States effective
11 prior to the first day of January, one thousand nine

12 hundred eighty-seven, shall be given effect in determin-
13 ing the taxes imposed by this article for any taxable
14 year beginning the first day of January, one thousand
15 nine hundred eighty-six, and thereafter, but no amend-
16 ment to the laws of the United States effective on or
17 after the first day of January, one thousand nine
18 hundred eighty-seven, shall be given effect.

19 (b) The term "Internal Revenue Code of 1986" means
20 the Internal Revenue Code of the United States enacted
21 by the "Federal Tax Reform Act of 1986" and includes
22 the provisions of law formerly known as the Internal
23 Revenue Code of 1954, as amended and in effect when
24 the "Federal Tax Reform Act of 1986" was enacted, that
25 were not amended or repealed by the "Federal Tax
26 Reform Act of 1986." Except when inappropriate, any
27 references in any law, executive order, or other
28 document:

29 (1) To the Internal Revenue Code of 1954 shall include
30 reference to the Internal Revenue Code of 1986, and

31 (2) To the Internal Revenue Code of 1986 shall include
32 a reference to the provisions of law formerly known as
33 the Internal Revenue Code of 1954.

CHAPTER 141

(S. B. 760—Originating in the Senate Committee on Finance)

[Passed June 14, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT to amend and reenact sections two, nine, nine-b, nine-c and nine-d, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section nine-e; to amend and reenact sections three, three-b, three-c and three-d, article fifteen-a of said chapter; and to amend section six, article twenty-four of said chapter, all relating to revision of state tax laws; refining the definitions of certain direct use items and the definition

of "transmission" for consumers sales and service tax and use tax purposes; amending the consumers sales and service tax exemption applicable to certain service providers and persons engaged in the business of commercial production of an agricultural product; clarifying and specifying the intended broad exemption to be applicable to businesses subject to gross receipts taxes for their purchases used either directly or indirectly in business in lieu of any limited exemption based on purchases directly used in business; providing for use of exemption certificates being furnished to vendors by persons engaged in the commercial production of an agricultural product, engaged in a business dispensing taxable services, by persons relying on advertising exemptions, or by purchasers of propane for poultry house heating purposes; authorizing tax commissioner to identify exempt purchases for which even furnishing of exemption certificates not required; requiring issuance by tax commissioner of direct pay permits, temporary or permanent, with payment being made to the tax commissioner rather than vendors; providing for apportionment of gross proceeds in respect of sales of property or service partly eligible for exemption and partly for nonexempt use in order to determine tax liability; providing for existing purchase contracts, executed and binding before date of terminated exemption and payments to be subsequently made or prepaid for subsequent periods on and after such termination date to remain exempt, with only new contracts entered into on and after the specified date to be subject to tax; deleting obsolete language from certain exemption in use tax law and that use tax law fully complement consumers sales tax law; and specifying applicability of obligations or securities of the United States or authorized for issuance by specified entities by the United States Congress for adjustment purposes under corporation net income tax law.

Be it enacted by the Legislature of West Virginia:

That sections two, nine, nine-b, nine-c and nine-d, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended

and reenacted; that said article be further amended by adding thereto a new section, designated section nine-e; that sections three, three-b, three-c and three-d, article fifteen-a of said chapter be amended and reenacted; and that section six, article twenty-four of said chapter be amended and reenacted, all to read as follows:

Article

15. **Consumers Sales Tax.**

15A. **Use Tax.**

24. **Corporation Net Income Tax.**

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-2. **Definitions.**

§11-15-9. **Exemptions.**

§11-15-9b. **Method of claiming exemptions, refunds of tax, credit against other taxes.**

§11-15-9c. **Delivery of a certificate of exemption in lieu of tax.**

§11-15-9d. **Direct pay permits.**

§11-15-9e. **Apportionment of purchase price; existing contracts protected.**

***§11-15-2. Definitions.**

1 For the purpose of this article:

2 (a) "Persons" shall mean any individual, partnership,
3 association, corporation, municipal corporation,
4 guardian, trustee, committee, executor or administrator.

5 (b) "Tax commissioner" shall mean the state tax
6 commissioner.

7 (c) "Gross proceeds" shall mean the amount received
8 in money, credits, property or other consideration from
9 sales and services within this state, without deduction
10 on account of the cost of property sold, amounts paid for
11 interest or discounts or other expenses whatsoever.
12 Losses shall not be deducted, but any credit or refund
13 made for goods returned may be deducted.

14 (d) "Sale," "sales" or "selling" shall include any
15 transfer of the possession or ownership of tangible
16 personal property for a consideration, including a lease
17 or rental, when the transfer or delivery is made in the
18 ordinary course of the transferor's business and is made
19 to the transferee or his agent for consumption or use or
20 any other purpose.

*Clerk's Note: This section was also amended by S.B. 536, which passed prior to this act.

21 (e) "Vendor" shall mean any person engaged in this
22 state in furnishing services taxed by this article or
23 making sales of tangible personal property.

24 (f) "Ultimate consumer" or "consumer" shall mean a
25 person who uses or consumes services or personal
26 property.

27 (g) "Business" shall include all activities engaged in
28 or caused to be engaged in with the object of gain or
29 economic benefit, direct or indirect, and all activities of
30 the state and its political subdivisions which involve
31 sales of tangible personal property or the rendering of
32 services when those service activities compete with or
33 may compete with the activities of other persons.

34 (h) "Tax" shall include all taxes, interest and penalties
35 levied hereunder.

36 (i) "Service" or "selected service" shall include all
37 nonprofessional activities engaged in for other persons
38 for a consideration, which involve the rendering of a
39 service as distinguished from the sale of tangible
40 personal property, but shall not include contracting,
41 personal services or the services rendered by an
42 employee to his employer or any service rendered for
43 resale.

44 (j) "Purchaser" shall mean a person who purchases
45 tangible personal property or a service taxed by this
46 article.

47 (k) "Personal service" shall include those:

48 (1) Compensated by the payment of wages in the
49 ordinary course of employment; and

50 (2) Rendered to the person of an individual without,
51 at the same time, selling tangible personal property,
52 such as nursing, barbering, shoe shining, manicuring
53 and similar services.

54 (l) "Taxpayer" shall mean any person liable for the
55 tax imposed by this article.

56 (m) "Drugs" shall include all sales of drugs or
57 appliances to a purchaser, upon prescription of a

58 physician or dentist and any other professional person
59 licensed to prescribe.

60 (n) (1) "Directly used or consumed" in the activities of
61 contracting, manufacturing, transportation, transmis-
62 sion, communication or the production of natural
63 resources shall mean used or consumed in those
64 activities or operations which constitute an integral and
65 essential part of such activities, as contrasted with and
66 distinguished from those activities or operations which
67 are simply incidental, convenient or remote to such
68 activities.

69 (2) Uses of property or consumption of services which
70 constitute direct use or consumption in the activities of
71 contracting, manufacturing, transportation, transmis-
72 sion, communication or the production of natural
73 resources shall include only:

74 (A) In the case of tangible personal property, physical
75 incorporation of property into a finished product
76 resulting from manufacturing production or the produc-
77 tion of natural resources or resulting from contracting
78 activity;

79 (B) Causing a direct physical, chemical or other
80 change upon property undergoing manufacturing
81 production or production of natural resources or which
82 is the subject of contracting activity;

83 (C) Transporting or storing property undergoing
84 transportation, communication, transmission, manufac-
85 turing production, or production of natural resources or
86 which is the subject of contracting activity;

87 (D) Measuring or verifying a change in property
88 directly used in transportation, communication, trans-
89 mission, manufacturing production or production of
90 natural resources or contracting activity;

91 (E) Physically controlling or directing the physical
92 movement or operation of property directly used in
93 transportation, communication, transmission, manufac-
94 turing production or production of natural resources or
95 contracting activity;

96 (F) Directly and physically recording the flow of
97 property undergoing transportation, communication,
98 transmission, manufacturing production or production
99 of natural resources or which is the subject of contract-
100 ing activity;

101 (G) Producing energy for property directly used in
102 transportation, communication, transmission, manufac-
103 turing production or production of natural resources or
104 contracting activity;

105 (H) Facilitating the transmission of gas, water, steam
106 or electricity from the point of their diversion to
107 property directly used in transportation, communica-
108 tion, transmission, manufacturing production or produc-
109 tion of natural resources or contracting activity;

110 (I) Controlling or otherwise regulating atmospheric
111 conditions required for transportation, communication,
112 transmission, manufacturing production or production
113 of natural resources or contracting activity;

114 (J) Serving as an operating supply for property
115 undergoing transmission, manufacturing production or
116 production of natural resources or which is the subject
117 of contracting activity or for property directly used in
118 transportation, communication, transmission, manufac-
119 turing production or production of natural resources or
120 contracting activity;

121 (K) Maintenance or repair of property directly used
122 in transportation, communication, transmission, manu-
123 facturing production or production of natural resources
124 or contracting activity;

125 (L) Storage, removal or transportation of economic
126 waste resulting from the activities of contracting,
127 manufacturing, transportation, communication, trans-
128 mission or the production of natural resources;

129 (M) Pollution control or environmental quality or
130 protection activity directly relating to the activities of
131 contracting, manufacturing, transportation, communi-
132 cation, transmission or the production of natural
133 resources and personnel, plant, product or community
134 safety or security activity directly relating to the

135 activities of contracting, manufacturing, transportation,
136 communication, transmission or the production of
137 natural resources; or

138 (N) Otherwise be used as an integral and essential
139 part of transportation, communication, transmission,
140 manufacturing production or production of natural
141 resources or contracting activity.

142 (3) Uses of property or services which would not
143 constitute direct use or consumption in the activities of
144 contracting, manufacturing, transportation, transmis-
145 sion, communication or the production of natural
146 resources shall include, but not be limited to:

147 (A) Heating and illumination of office buildings;

148 (B) Janitorial or general cleaning activities;

149 (C) Personal comfort of personnel;

150 (D) Production planning, scheduling of work, or
151 inventory control;

152 (E) Marketing, general management, supervision,
153 finance, training, accounting and administration; or

154 (F) An activity or function incidental or convenient to
155 transportation, communication, transmission, manufac-
156 turing production or production of natural resources or
157 contracting activity, rather than an integral and
158 essential part of such activities.

159 (o) "Contracting" shall mean the furnishing of work,
160 or both materials and work, in fulfillment of a contract
161 for the construction, alteration, repair, decoration or
162 improvement of a new or existing building or structure,
163 or any part thereof, or for removal or demolition of a
164 building or structure, or any part thereof, or for the
165 alteration, improvement or development of real prop-
166 erty. For purposes of this definition, the term "struc-
167 ture" shall include, but not be limited to, everything
168 built up or composed of parts joined together in some
169 definite manner and attached to real property, or which
170 adds utility to a particular parcel of property and is
171 intended to remain there for an indefinite period of
172 time.

173 (p) "Manufacturing" shall mean a systematic opera-
174 tion or integrated series of systematic operations
175 engaged in as a business or segment of a business which
176 transforms or converts tangible personal property by
177 physical, chemical or other means into a different form,
178 composition or character from that in which it originally
179 existed.

180 (q) "Transportation" shall mean the act or process of
181 conveying, as a commercial enterprise, passengers or
182 goods from one place or geographical location to another
183 place or geographical location.

184 (r) "Transmission" shall mean the act or process of
185 causing liquid, natural gas or electricity to pass or be
186 conveyed from one place or geographical location to
187 another place or geographical location through a
188 pipeline or other medium for commercial purposes.

189 (s) "Communication" shall mean all telephone, radio,
190 light, light wave, radio telephone, telegraph and other
191 communication or means of communication, whether
192 used for voice communication, computer data transmis-
193 sion or other encoded symbolic information transfers
194 and shall include commercial broadcast radio, commer-
195 cial broadcast television and cable television.

196 (t) "Production of natural resources" shall mean the
197 performance, by either the owner of the natural
198 resources or another, of the act or process of exploring,
199 developing, severing, extracting, reducing to possession
200 and loading for shipment for sale, profit or commercial
201 use of any natural resource products and any reclama-
202 tion, waste disposal or environmental activities asso-
203 ciated therewith.

*§11-15-9. Exemptions.

1 The following sales and services shall be exempt:

2 (a) Sales of gas, steam and water delivered to consu-
3 mers through mains or pipes, and sales of electricity;

4 (b) Sales of textbooks required to be used in any of
5 the schools of this state;

*Clerk's Note: This section was also amended by S.B. 536, which passed prior to this act.

- 6 (c) Sales of property or services to the state, its
7 institutions or subdivisions, and to the United States,
8 including agencies of federal, state or local governments
9 for distribution in public welfare or relief work;
- 10 (d) Sales of motor vehicles which are titled by the
11 department of motor vehicles and which are subject to
12 the tax imposed by section four, article three, chapter
13 seventeen-a of the code;
- 14 (e) Sales of property or services to churches and bona
15 fide charitable organizations who make no charge
16 whatsoever for the services they render: *Provided*, That
17 the exemption herein granted shall apply only to
18 services, equipment, supplies and materials directly
19 used or consumed by these organizations, and shall not
20 apply to purchases of gasoline or special fuel;
- 21 (f) Sales of property or services to corporations or
22 organizations qualified under section 501(c)(3) of the
23 Internal Revenue Code of 1986, as amended, or under
24 section 501(c)(4) of the Internal Revenue Code of 1986,
25 as amended, who make casual and occasional sales not
26 conducted in a repeated manner or in the ordinary
27 course of repetitive and successive transactions of like
28 character: *Provided*, That the exemption herein granted
29 shall apply only to services, equipment, supplies and
30 materials directly used or consumed in the activities for
31 which such organizations qualify as tax exempt organ-
32 ization under the Internal Revenue Code by these
33 organizations and shall not apply to purchases of
34 gasoline or special fuel;
- 35 (g) Sales of property or services to persons engaged
36 in this state in the business of contracting, manufactur-
37 ing, transportation, transmission, communication or in
38 the production of natural resources: *Provided*, That the
39 exemption herein granted shall apply only to services,
40 machinery, supplies and materials directly used or
41 consumed in the businesses or organizations named
42 above, and shall not apply to purchases of gasoline or
43 special fuel: *Provided, however*, That on and after the
44 first day of July, one thousand nine hundred eighty-
45 seven, the exemption provided in this subsection shall
46 apply only to services, machinery, supplies and mate-

47 rials directly used or consumed in the activities of
48 contracting, manufacturing, transportation, transmis-
49 sion, communication or the production of natural
50 resources in the businesses or organizations named
51 above and shall not apply to purchases of gasoline or
52 special fuel;

53 (h) An isolated transaction in which any tangible
54 personal property is sold, transferred, offered for sale,
55 or delivered by the owner thereof or by his representa-
56 tive for the owner's account, such sale, transfer, offer for
57 sale or delivery not being made in the ordinary course
58 of repeated and successive transactions of like character
59 by such owner or on his account by such representative;

60 (i) Sales of tangible personal property and services
61 rendered for use or consumption in connection with the
62 business of dispensing a service subject to tax under this
63 article and sales of tangible personal property and
64 services rendered for use or consumption in connection
65 with the commercial production of an agricultural
66 product the ultimate sale of which will be subject to the
67 tax imposed by this article or which would have been
68 subject to tax under this article but for the exemption
69 for food provided in section eleven of this article:
70 *Provided*, That sales of tangible personal property and
71 services to be used or consumed in the construction of
72 or permanent improvement to real property and sales
73 of gasoline and special fuel shall not be exempt;

74 (j) Sales of tangible personal property for the purpose
75 of resale in the form of tangible personal property:
76 *Provided*, That sales of gasoline and special fuel by
77 distributors and importers shall be taxable except when
78 the sale is to another distributor for resale;

79 (k) Sales of property or services to nationally char-
80 tered fraternal or social organizations for the sole
81 purpose of free distribution in public welfare or relief
82 work: *Provided*, That sales of gasoline and special fuel
83 shall be taxable;

84 (l) Sales and services, fire fighting or station house
85 equipment, including construction and automotive,
86 made to any volunteer fire department organized and

87 incorporated under the laws of the state of West
88 Virginia: *Provided*, That sales of gasoline and special
89 fuel shall be taxable;

90 (m) Sales of newspapers when delivered to consumers
91 by route carriers;

92 (n) Sales of drugs dispensed upon prescription and
93 sales of insulin to consumers for medical purposes;

94 (o) Sales of radio and television broadcasting time,
95 preprinted advertising circulars, and newspaper and
96 outdoor advertising space for the advertisement of goods
97 or services;

98 (p) Sales and services performed by day care centers;

99 (q) Casual and occasional sales of property or services
100 not conducted in a repeated manner or in the ordinary
101 course of repetitive and successive transactions of like
102 character by corporations or organizations qualified
103 under section 501(c)(3) of the Internal Revenue Code of
104 1986, as amended, or under section 501(c)(4) of the
105 Internal Revenue Code of 1986, as amended;

106 (r) Sales of property or services to a school which has
107 approval from the West Virginia board of regents to
108 award degrees, which has its principal campus in this
109 state, and which is exempt from federal and state
110 income taxes under section 501(c)(3) of the Internal
111 Revenue Code of 1986, as amended: *Provided*, That sales
112 of gasoline and special fuel shall be taxable;

113 (s) Sales of mobile homes to be utilized by purchasers
114 as their principal year-round residence and dwelling:
115 *Provided*, That these mobile homes shall be subject to
116 tax at the three percent rate;

117 (t) Sales of lottery tickets and materials by licensed
118 lottery sales agents and lottery retailers authorized by
119 the state lottery commission, under the provisions of
120 article twenty-two, chapter twenty-nine of this code;

121 (u) Leases of motor vehicles titled pursuant to the
122 provisions of article three, chapter seventeen-a of this
123 code to lessees for a period of thirty or more consecutive
124 days. This exemption shall apply to leases executed on

125 or after the first day of July, one thousand nine hundred
126 eighty-seven, and to payments under long-term leases
127 executed before such date, for months thereof beginning
128 on or after such date;

129 (v) Notwithstanding the provisions of subsection (g) of
130 this section or any provisions of this article to the
131 contrary, sales of property and services to persons
132 subject to tax under article thirteen, thirteen-a or
133 thirteen-b of this chapter: *Provided*, That the exemption
134 herein granted shall apply both to property or services
135 directly or not directly used or consumed in businesses,
136 the gross receipts from which are subject to tax under
137 such articles but shall not apply to purchases of gasoline
138 or special fuel;

139 (w) Sales of propane to consumers for poultry house
140 heating purposes, with any seller to such consumer who
141 may have prior paid such tax in his price, to not pass
142 on the same to the consumer, but to make application
143 and receive refund of such tax from the tax commis-
144 sioner, pursuant to rules and regulations which shall be
145 promulgated by the tax commissioner; and notwith-
146 standing the provisions of section eighteen of this article
147 or any other provisions of such article to the contrary;

148 (x) Any sales of tangible personal property or services
149 purchased after the thirtieth day of September, one
150 thousand nine hundred eighty-seven, and lawfully paid
151 for with food stamps pursuant to the federal food stamp
152 program codified in United States Code, 2011, et seq.,
153 as amended;

154 (y) Sales of tickets for activities sponsored by elemen-
155 tary and secondary schools located within this state; and

156 (z) Sales of electronic data processing services and
157 related software: *Provided*, That for the purposes of this
158 subsection (z) "electronic data processing services"
159 means (1) the processing of another's data, including all
160 processes incident to processing of data such as key-
161 punching, keystroke verification, rearranging, or
162 sorting of previously documented data for the purpose
163 of data entry or automatic processing, and changing the
164 medium on which data is sorted, whether these pro-

165 cesses are done by the same person or several persons;
166 and (2) providing access to computer equipment for the
167 purpose of processing data or examining or acquiring
168 data stored in or accessible to such computer equipment.

***§11-15-9b. Method for claiming exemptions, refunds of tax, credit against other taxes.**

1 (a) Any person having a right or claim to any
2 exemption set forth in section nine of this article except
3 those exemptions set forth in subsections (a), (b), (c), (d),
4 (h), (i), (j), (m), (n), (o), (p), (r), (s), (t), (u), (w), (x) and
5 (y) of said section nine or the exemption of sales of
6 property or services to churches under subsection (e) of
7 said section nine shall pay to the vendor the tax imposed
8 by this article and may exercise or assert such exemp-
9 tion only in accordance with subsection (b) or subsection
10 (c) of this section.

11 (b) Any person who has paid the tax imposed by this
12 article and who may lawfully claim exemption from the
13 tax under a subsection of section nine of this article not
14 enumerated in subsection (a) of this section may exercise
15 or assert such claim by filing a claim for refund of
16 consumers sales and service tax overpayments on such
17 form and in such manner as the tax commissioner may
18 require and in accordance with the requirements of this
19 section. The tax commissioner shall cause a refund to
20 be made within thirty days of receipt of a lawful and
21 accurate claim.

22 (c) In lieu of filing a claim for refund of consumers
23 sales and service tax overpayments, the taxpayer may,
24 at his option, file a claim for credit on such form and
25 in such manner as the tax commissioner may require
26 and credit the amount of consumers sales and service
27 tax overpayments against certain payments of tax due
28 in accordance with the requirements of this section as
29 follows:

30 (1) If the taxpayer is required to remit the tax
31 imposed under this article or article fifteen-a of this
32 chapter pursuant to section five or subsection (b) of
33 section nine-d of this article or subsection (b) of

*Clerk's Note: This section was also amended by S.B. 536, which passed prior to this act.

34 section three-d of said article fifteen-a, the taxpayer may
35 credit the amount of consumers sales and service tax
36 overpayments against the remittance of the tax imposed
37 under said articles otherwise due;

38 (2) If the taxpayer is subject to the tax imposed under
39 article thirteen of this chapter, the taxpayer may credit
40 the amount of consumers sales and service tax overpay-
41 ments remaining after application of part (1) of this
42 subsection against the taxpayer's quarterly or monthly
43 remittance of the tax imposed under said article
44 thirteen otherwise due; or

45 (3) If the taxpayer is subject to the tax imposed under
46 article twelve-a of this chapter, the taxpayer may credit
47 the amount of consumers sales and service tax overpay-
48 ments remaining after application of parts (1) and (2)
49 of this subsection against the taxpayer's annual or
50 semiannual remittance of the tax imposed under said
51 article twelve-a otherwise due; or

52 (4) If the taxpayer is subject to the tax imposed under
53 article thirteen-a of this chapter, the taxpayer may
54 credit the amount of consumers sales and service tax
55 overpayments remaining after application of parts (1),
56 (2) and (3) of this subsection against the taxpayer's
57 quarterly or monthly remittance of the tax imposed
58 under said article thirteen-a otherwise due; or

59 (5) If the taxpayer is subject to the tax imposed under
60 article thirteen-b of this chapter, the taxpayer may
61 credit the amount of consumers sales and service tax
62 overpayments remaining after application of parts (1),
63 (2), (3) and (4) of this subsection against the taxpayer's
64 quarterly or monthly remittance of the tax imposed
65 under said article thirteen-b otherwise due; or

66 (6) If the taxpayer is subject to the tax imposed under
67 article twenty-four of this chapter, the taxpayer may
68 credit the amount of consumers sales and service tax
69 overpayments remaining after application of parts (1),
70 (2), (3), (4) and (5) of this subsection against the
71 taxpayer's installment of estimated tax imposed under
72 said article twenty-four and otherwise due under section
73 seventeen, article twenty-four of this chapter; or

74 (7) If the taxpayer is subject to the tax imposed under
75 article twenty-one of this chapter, the taxpayer may
76 credit the amount of consumers sales and service tax
77 overpayments remaining after application of parts (1),
78 (2), (3), (4), (5) and (6) of this subsection against the
79 taxpayer's installment of estimated tax imposed under
80 said article twenty-one and otherwise due under section
81 fifty-six, article twenty-one of this chapter; or

82 (8) If the taxpayer is subject to the tax imposed under
83 article twenty-three of this chapter, the taxpayer may
84 credit the amount of consumers sales and service tax
85 overpayments remaining after application of parts (1),
86 (2), (3), (4), (5), (6) and (7) of this subsection against the
87 taxpayer's annual remittance of the tax imposed under
88 said article twenty-three and otherwise due; or

89 (9) If the taxpayer is required to deduct and withhold
90 tax under article twenty-one of this chapter, the
91 taxpayer may credit the amount of consumers sales and
92 service tax overpayments remaining after application of
93 parts (1), (2), (3), (4), (5), (6), (7) and (8) of this subsection
94 against the taxpayer's monthly remittance of the tax
95 withheld under said article twenty-one and otherwise
96 due.

97 (d) Any person asserting or exercising a claim of
98 exemption from the tax imposed by this article under
99 subsection (b) or (c) of this section shall file with the tax
100 commissioner an application for exemption in such form
101 as the tax commissioner shall prescribe and such
102 affidavits, invoices, sales slips, records or documents as
103 the tax commissioner may require to prove or verify the
104 taxpayer's right and entitlement to such exemption. The
105 tax commissioner may inspect or examine the records,
106 books, papers, documents, affidavits, sales slips and
107 invoices of a taxpayer or any other person to verify the
108 truth and accuracy of any report or return or to
109 ascertain whether the tax imposed by this article has
110 been paid.

111 In addition to the powers of the tax commissioner set
112 forth in article ten of this chapter, as a further means
113 of obtaining the records, books, papers, documents,

114 affidavits, sales slips or invoices of a taxpayer or any
115 other person and ascertaining the amount of taxes paid
116 or due under this article or any report, form, document
117 or affidavit required under this article, the commis-
118 sioner shall have the power to examine witnesses under
119 oath; and if any witness shall fail or refuse at the request
120 of the commissioner to grant access to the books,
121 records, papers, documents, affidavits, sales slips or
122 invoices requested by the commissioner, the commis-
123 sioner shall certify the facts and the names to the circuit
124 court of the county having jurisdiction over the party
125 and such court shall thereupon issue a subpoena duces
126 tecum to such party to appear before the commissioner,
127 at a place designated within the jurisdiction of such
128 court, on a day fixed.

129 (e) All claims for refund of consumers sales and
130 service tax overpayments under subsection (b) of this
131 section shall be filed within the time limitation for filing
132 claims for refund set forth in section fourteen, article
133 ten of this chapter. Any claim for such refund or claim
134 of entitlement to such refund made or asserted after the
135 said time limitation shall be null and void, and if the
136 consumers sales and service tax overpayment has not
137 otherwise been credited against tax remittances in
138 accordance with this section, the said claims shall be
139 forfeited.

140 (f) Any credit of consumers sales and service tax
141 overpayments against taxes under subsection (c) of this
142 section shall be taken within one year after the payment
143 of the said consumers sales and service tax by the
144 consumer to the vendor. Any such credit or claim of
145 entitlement to such credit made or asserted more than
146 one year after the payment of such tax by the consumer
147 to the vendor shall be null and void, and such consumers
148 sales and service tax overpayments shall be forfeited
149 unless refunded under subsection (b) of this section.

150 (g) Any assignment of the right or entitlement to a
151 refund or credit arising under this section shall be
152 subject to strict proof, and any assignee claiming a right
153 or entitlement to an assigned refund or credit shall
154 submit an affidavit in such form as the tax commis-

155 sioner shall prescribe signed by the assignor acknowl-
156 edging the assignment. The assignee shall attest to the
157 assignment and the terms thereof on his signed appli-
158 cation filed under subsection (d) of this section for
159 refund or credit, and will be subject to the penalties
160 provided under West Virginia law for perjury for any
161 falsehood set forth therein and will be subject to the
162 penalties set forth in article nine of this chapter for any
163 violation thereof. Except as provided in this subsection
164 (g), no payment of a refund arising under this section
165 shall be made to any person other than the taxpayer
166 making the original overpayment of consumers sales
167 and service tax.

168 (h) No refund shall be due and no credit shall be
169 allowed under this section unless the taxpayer or
170 assignee shall have filed a claim for refund or a claim
171 for credit, as appropriate, with the tax commissioner in
172 accordance with this section.

173 (i) Any claim for a refund of consumers sales and
174 service tax overpayments or for a tax credit for
175 consumers sales and service tax overpayments which is
176 not timely filed or not filed in proper form or in
177 accordance with the requirements of this section shall
178 not be construed to constitute a moral obligation of the
179 state of West Virginia for payment. No overpayment of
180 consumers sales and service tax made under this section
181 shall be subject to subsection (d), section seventeen,
182 article ten of this chapter or subdivision (1), subsection
183 (e), section seventeen, article ten of this chapter.

184 (j) The provisions of this section become effective after
185 the thirtieth day of June, one thousand nine hundred
186 eighty-seven.

***§11-15-9c. Delivery of a certificate of exemption in lieu
of tax.**

1 Persons having a right or claim to any exemption set
2 forth in subsections (a), (b), (c), (d), (h), (i), (j), (m), (n),
3 (o), (p), (r), (s), (t), (u), (w), (x) and (y), section nine of
4 this article shall, in lieu of paying the tax imposed by
5 this article, execute a certificate of exemption in such

*Clerk's Note: This section was also amended by S.B. 536, which passed prior to this act.

6 form as the tax commissioner may require, and such
7 executed exemption certificate shall be delivered to the
8 vendor in such manner as the tax commissioner may
9 require: *Provided*, That the tax commissioner may
10 identify exemptions for which exemption certificates are
11 not required and as soon as practical may specify by
12 regulation exemptions for which exemption certificates
13 are not required.

***§11-15-9d. Direct pay permits.**

1 (a) Notwithstanding any other provision of this
2 article, the tax commissioner shall, pursuant to rules
3 and regulations promulgated as soon as practical by the
4 tax commissioner in accordance with article three,
5 chapter twenty-nine-a of this code, authorize a person
6 (as defined in section two) that is a user, consumer,
7 distributor or lessee to which sales or leases of tangible
8 personal property are made or services provided, to pay
9 any tax levied by this article or article fifteen-a of this
10 chapter directly to the tax commissioner and waive the
11 collection of the tax by that person's vendor. No such
12 authority shall be granted or exercised except upon
13 application to the tax commissioner and after issuance
14 by the tax commissioner of a direct pay permit, except
15 that a temporary permit may immediately and provi-
16 sionally be authorized by the tax commissioner in
17 respect of any interim or transitional period, with either
18 termination of such temporary permit thereafter or a
19 permanent permit to subsequently issue as promptly as
20 practicable, for purchases made from the vendor or
21 vendors identified or specified in a manner acceptable
22 to and as authorized by the tax commissioner. Upon
23 issuance of such direct pay permit, payment of the tax
24 imposed or assertion of the exemptions allowed by this
25 article or article fifteen-a of this chapter on sales and
26 leases of tangible personal property and sales of taxable
27 services from such vendors shall be made directly to the
28 tax commissioner by the permit holder.

29 (b) On or before the fifteenth day of each month, every
30 permit holder shall make and file with the tax commis-
31 sioner a return for the preceding month in the form

*Clerk's Note: This section was also amended by S.B. 536, which passed prior to this act.

32 prescribed by the tax commissioner showing the total
33 value of the tangible personal property so used, the
34 amount of taxable services purchased, the amount of tax
35 due from the permit holder, which amount shall be paid
36 to the tax commissioner with such return, and such
37 other information as the tax commissioner deems
38 necessary. The tax commissioner, upon written request
39 by the permit holder, may grant a reasonable extension
40 of time for the making and filing of returns and paying
41 the tax. Interest on such tax shall be chargeable on
42 every such extended payment at the rate determined in
43 accordance with section seventeen, article ten of this
44 chapter.

45 (c) A permit issued pursuant to this section shall
46 continue to be valid until expiration of the business's
47 registration year under article twelve of this chapter.
48 This permit shall automatically be renewed when the
49 business's business registration certificate is issued for
50 the next succeeding fiscal year, unless the permit is
51 surrendered by the holder or canceled for cause by the
52 tax commissioner.

53 (d) Persons who hold a direct payment permit which
54 has not been canceled shall not be required to pay the
55 tax to the vendor as otherwise provided in this article
56 or article fifteen-a of this chapter. Such persons shall
57 notify each vendor from whom tangible personal
58 property is purchased or leased or from whom services
59 are purchased of their direct payment permit number
60 and that the tax is being paid directly to the tax
61 commissioner. Upon receipt of such notice, such vendor
62 shall be absolved from all duties and liabilities imposed
63 by this chapter for the collection and remittance of the
64 tax with respect to sales, distributions, leases, or storage
65 of tangible personal property and sales of services to
66 such permit holder. Vendors who make sales upon
67 which the tax is not collected by reason of the provisions
68 of this section shall maintain records in such manner
69 that the amount involved and identity of each such
70 purchaser may be ascertained.

71 (e) Upon the expiration, cancellation or surrender of
72 a direct payment permit, the provisions of this chapter,
73 without regard to this section, shall thereafter apply to

74 the person who previously held such permit, and such
75 person shall promptly so notify in writing vendors from
76 whom purchases, leases and storage of tangible personal
77 property are made of such cancellation or surrender.
78 Upon receipt of such notice, the vendor shall be subject
79 to the provisions of this chapter, without regard to this
80 section, with respect to all sales, distributions, leases or
81 storage of tangible personal property, thereafter made
82 to or for such person.

§11-15-9e. Apportionment of purchase price; existing contracts protected.

1 Whenever a purchaser will use acquired tangible
2 personal property, a service, or the results of a service
3 for both exempt and nonexempt purposes, the gross
4 proceeds of such sale paid to the vendor for such
5 property or service shall be apportioned between the
6 exempt and nonexempt uses, in a manner established as
7 reasonable by the tax commissioner, by regulations the
8 tax commissioner may prescribe, for the purpose of
9 determining the tax liability in respect of such
10 purchase.

11 Contracts existing, executed, and binding prior to the
12 first day of July, one thousand nine hundred eighty-
13 seven, for the purchase of tangible personal property or
14 services, by lease or otherwise, and in connection with
15 which an exemption from tax was applicable to such
16 purchase prior to such date but terminated on and after
17 the same; no new tax liability shall arise in respect of
18 payments to be subsequently made under such a
19 contract nor to payments prepaid thereunder for any
20 periods subsequent to such date, but only new contracts
21 entered into on and after the first day of July, one
22 thousand nine hundred eight-seven shall be liable for
23 tax under the provisions of this article or of article
24 fifteen-a of this chapter where such a prior applicable
25 exemption has been so terminated.

ARTICLE 15A. USE TAX.

§11-15A-3. Exemptions.

§11-15A-3b. Method for claiming exemptions, refunds of tax, credit against other taxes.

§11-15A-3c. Delivery of a certificate in lieu of tax.

§11-15A-3d. Direct pay permits.

§11-15A-3. Exemptions.

1 (a) The use in this state of the following tangible
2 personal property and services is hereby specifically
3 exempted from the tax imposed by this article to the
4 extent specified:

5 (1) All articles of tangible personal property brought
6 into the state of West Virginia by a nonresident
7 individual thereof for his or her use or enjoyment while
8 temporarily within this state or while passing through
9 this state, except gasoline and special fuel: *Provided,*
10 That fuel contained in the supply tank of a motor vehicle
11 that is not a motor carrier shall not be taxable.

12 (2) Tangible personal property or services, the gross
13 receipts from the sale of which are exempt from the
14 sales tax by the terms of article fifteen, chapter eleven
15 of the code of West Virginia, one thousand nine hundred
16 thirty-one, as amended, and the property or services are
17 being used for the purpose for which it was exempted.

18 (3) Tangible personal property or services, the gross
19 receipts or the gross proceeds from the sale of which are
20 required to be included in the measure of the tax
21 imposed by article fifteen, chapter eleven of the code of
22 West Virginia, one thousand nine hundred thirty-one, as
23 amended, and upon which the tax imposed by said
24 article fifteen has been paid.

25 (4) Tangible personal property or services, the sale of
26 which in this state is not subject to the West Virginia
27 consumers sales tax.

28 (5) Mobile homes utilized by the owners thereof as
29 their principal year-round residence and dwelling:
30 *Provided,* That use of these mobile homes shall be
31 subject to tax at the three percent rate.

32 (b) The provisions of this section, as amended, shall
33 apply on and after the first day of July, one thousand
34 nine hundred eighty-seven.

***§11-15A-3b. Method for claiming exemptions, refunds of tax, credit against other taxes.**

1 (a) Any person having a right or claim to an exemp-

* Clerk's Note: This section was also amended by S.B. 536, which passed prior to this act.

2 tion from the tax imposed by this article by reason of
3 any exemption set forth in section nine, article fifteen
4 of this chapter except those exemptions set forth in
5 subsections (a), (b), (c), (d), (h), (i), (j), (m), (n), (o), (p),
6 (r), (s), (t), (u), (w), (x) and (y) of said section nine shall
7 pay to the vendor the tax imposed by this article and
8 may exercise or assert such exemption only in accor-
9 dance with subsection (b) or subsection (c) of this section.

10 (b) Any person who has paid the tax imposed by this
11 article and who may lawfully claim under section three
12 of this article any exemption set forth under a subsec-
13 tion of section nine of article fifteen not enumerated in
14 subsection (a) of this section may exercise or assert such
15 claim by filing a claim for refund of use tax overpay-
16 ments on such form and in such manner as the tax
17 commissioner may require and in accordance with the
18 requirements of this section.

19 (c) In lieu of filing a claim for refund of use tax
20 overpayments, the taxpayer may, at his option, file a
21 claim for credit on such form and in such manner as
22 the tax commissioner may require and credit the
23 amount of use tax overpayments against certain pay-
24 ments of tax due in accordance with the requirements
25 of this section as follows:

26 (1) If the taxpayer is required to remit the tax
27 imposed under this article or article fifteen of this
28 chapter pursuant to section five or subsection (b) of
29 section nine-d of said article fifteen or subsection (b) of
30 section three-d of this article, the taxpayer may credit
31 the amount of use tax overpayments against the
32 remittance of the tax imposed under said articles
33 otherwise due;

34 (2) If the taxpayer is subject to the tax imposed under
35 article thirteen of this chapter, the taxpayer may credit
36 the amount of use tax overpayments remaining after
37 application of part (1) of this subsection against the
38 taxpayer's quarterly or monthly remittance of the tax
39 imposed under said article thirteen otherwise due; or

40 (3) If the taxpayer is subject to the tax imposed under
41 article twelve-a of this chapter, the taxpayer may credit

42 the amount of use tax overpayments remaining after
43 application of parts (1) and (2) of this subsection against
44 the taxpayer's annual or semiannual remittance of the
45 tax imposed under said article twelve-a otherwise due;
46 or

47 (4) If the taxpayer is subject to the tax imposed under
48 article thirteen-a of this chapter, the taxpayer may
49 credit the amount of use tax overpayments remaining
50 after application of parts (1), (2) and (3) of this
51 subsection against the taxpayer's quarterly or monthly
52 remittance of the tax imposed under said article
53 thirteen-a otherwise due; or

54 (5) If the taxpayer is subject to the tax imposed under
55 article thirteen-b of this chapter, the taxpayer may
56 credit the amount of use tax overpayments remaining
57 after application of parts (1), (2), (3) and (4) of this
58 subsection against the taxpayer's quarterly or monthly
59 remittance of the tax imposed under said article
60 thirteen-b otherwise due; or

61 (6) If the taxpayer is subject to the tax imposed under
62 article twenty-four of this chapter, the taxpayer may
63 credit the amount of use tax overpayments remaining
64 after application of parts (1), (2), (3), (4) and (5) of this
65 subsection against the taxpayer's installment of esti-
66 mated tax imposed under said article twenty-four and
67 otherwise due under section seventeen, article twenty-
68 four of this chapter; or

69 (7) If the taxpayer is subject to the tax imposed under
70 article twenty-one of this chapter, the taxpayer may
71 credit the amount of use tax overpayments remaining
72 after application of parts (1), (2), (3), (4), (5) and (6) of
73 this subsection against the taxpayer's installment of
74 estimated tax imposed under said article twenty-one and
75 otherwise due under section fifty-six, article twenty-one
76 of this chapter; or

77 (8) If the taxpayer is subject to the tax imposed under
78 article twenty-three of this chapter, the taxpayer may
79 credit the amount of use tax overpayments remaining
80 after application of parts (1), (2), (3), (4), (5), (6) and (7)
81 of this subsection against the taxpayer's annual remit-

82 tance of the tax imposed under said article twenty-three
83 and otherwise due; or

84 (9) If the taxpayer is required to deduct and withhold
85 tax under article twenty-one of this chapter, the
86 taxpayer may credit the amount of use tax overpay-
87 ments remaining after application of parts (1), (2), (3),
88 (4), (5), (6), (7) and (8) of this subsection against the
89 taxpayer's monthly remittance of the tax withheld
90 under said article twenty-one and otherwise due.

91 (d) Any person asserting or exercising a claim of
92 exemption from the tax imposed by this article under
93 subsection (b) or (c) of this section shall file with the tax
94 commissioner an application for exemption in such form
95 as the tax commissioner shall prescribe and such
96 affidavits, invoices, sales slips, records or documents as
97 the tax commissioner may require to prove or verify the
98 taxpayer's right and entitlement to such exemption. The
99 tax commissioner may inspect or examine the records,
100 books, papers, documents, affidavits, sales slips and
101 invoices of a taxpayer or any other person to verify the
102 truth and accuracy of any report or return or to
103 ascertain whether the tax imposed by this article or
104 article fifteen of this chapter has been paid.

105 In addition to the powers of the tax commissioner set
106 forth in article ten of this chapter, as a further means
107 of obtaining the records, books, papers, documents,
108 affidavits, sales slips or invoices of a taxpayer or any
109 other person and ascertaining the amount of taxes paid
110 or due under this article or article fifteen of this chapter
111 or any report, form, document or affidavit required
112 under this article or article fifteen of this chapter, the
113 commissioner shall have the power to examine witnesses
114 under oath; and if any witness shall fail or refuse at the
115 request of the commissioner to grant access to the books,
116 records, papers, documents, affidavits, sales slips or
117 invoices requested by the commissioner, the commis-
118 sioner shall certify the facts and the names to the circuit
119 court of the county having jurisdiction of the party, and
120 such court shall thereupon issue a subpoena duces tecum
121 to such party to appear before the commissioner, at a

122 place designated within the jurisdiction of such court,
123 on a day fixed.

124 (e) All claims for refund of use tax overpayments
125 under subsection (b) of this section shall be filed within
126 the time limitation for filing claims for refund set forth
127 in section fourteen, article ten of this chapter. Any claim
128 for such refund or claim of entitlement to such refund
129 made or asserted after the said time limitation shall be
130 null and void, and if the use tax overpayment has not
131 otherwise been credited against tax remittances in
132 accordance with this section, the said claims shall be
133 forfeited.

134 (f) Any credit of use tax overpayments against taxes
135 under subsection (c) of this section shall be taken within
136 one year after the payment of the tax by the taxpayer
137 to the vendor. Any such credit or claim of entitlement
138 to such credit made or asserted more than one year after
139 the payment of such tax by the taxpayer to the vendor
140 shall be null and void, and such tax overpayments shall
141 be forfeited.

142 (g) Any assignment of the right or entitlement to a
143 refund or credit arising under this section shall be
144 subject to strict proof, and any assignee claiming a right
145 or entitlement to an assigned refund or credit shall
146 submit an affidavit in such form as the tax commis-
147 sioner shall prescribe signed by the assignor acknowl-
148 edging the assignment. The assignee shall attest to the
149 assignment and the terms thereof of his signed appli-
150 cation filed under subsection (e) of this section for
151 refund or credit, and will be subject to the penalties
152 provided under West Virginia law for perjury for any
153 falsehood set forth therein and will be subject to the
154 penalties set forth in article nine of this chapter for any
155 violation thereof. Except as provided in this subsection
156 (h), no payment of a refund arising under this section
157 shall be made to any person other than the taxpayer
158 making the original overpayment of consumers sales
159 and service tax.

160 (h) No refund shall be due and no credit shall be
161 allowed unless the taxpayer or assignee shall have filed

162 a claim for refund or a claim for credit, as appropriate,
163 with the tax commissioner in accordance with this
164 section.

165 (i) Any claim for a refund of use tax overpayments or
166 a tax credit for use tax overpayments which is not
167 timely filed or not filed in proper form or in accordance
168 with the requirements of this section shall not be
169 construed to constitute a moral obligation of the state
170 of West Virginia for payment. No overpayment of use
171 tax made under this section shall be subject to subsec-
172 tion (d), section seventeen, article ten of this chapter, or
173 subdivision (1), subsection (e), section seventeen, article
174 ten of this chapter.

175 (j) The provisions of this section become effective after
176 the thirtieth day of June, one thousand nine hundred
177 eighty-seven.

***§11-15A-3c. Delivery of a certificate of exemption in lieu
of tax.**

1 Persons having a right or claim under section three
2 of this article, to any exemption set forth in subsections
3 (a), (b), (c), (d), (h), (i), (j), (m), (n), (o), (p), (r), (s), (t),
4 (u), (w), (x) and (y), section nine, article fifteen of this
5 chapter shall, in lieu of paying the tax imposed by this
6 article, execute a certificate of exemption in such form
7 as the tax commissioner may require, and such executed
8 exemption certificate shall be delivered to the vendor in
9 such manner as the tax commissioner may require:
10 *Provided*, That the tax commissioner may identify
11 exemptions for which exemption certificates are not
12 required and as soon as practical may specify by
13 regulation exemptions for which exemption certificates
14 are not required.

***§11-15A-3d. Direct pay permits.**

1 (a) Notwithstanding any other provision of this
2 article, the tax commissioner shall, pursuant to rules
3 and regulations promulgated as soon as practical by the
4 tax commissioner in accordance with article three,
5 chapter twenty-nine-a of this code, authorize a person

*Clerk's Note: These sections were also amended by S.B. 536, which passed prior to this act.

6 (as defined in section two of article fifteen) that is a user,
7 consumer, distributor or lessee to which sales or leases
8 of tangible personal property are made or services
9 provided to pay any tax levied by this article or article
10 fifteen of this chapter directly to the tax commissioner
11 and waive the collection of the tax by that person's
12 vendor. No such authority shall be granted or exercised
13 except upon application to the tax commissioner and
14 after issuance by the tax commissioner of a direct pay
15 permit, except that a temporary permit may imme-
16 diately and provisionally be authorized by the tax
17 commissioner in respect of any interim or transitional
18 period, with either termination of such temporary
19 permit thereafter or a permanent permit to subse-
20 quently issue as promptly as practicable, for purchases
21 made from the vendor or vendors identified or specified
22 in a manner acceptable to and as authorized by the tax
23 commissioner. Upon issuance of such direct pay permit,
24 payment of the tax imposed or assertion of the exemp-
25 tions allowed by this article or article fifteen of this
26 chapter on sales and leases of tangible personal property
27 and sales of taxable services from such vendors shall be
28 made directly to the tax commissioner by the permit
29 holder.

30 (b) On or before the fifteenth day of each month, every
31 permit holder shall make and file with the tax commis-
32 sioner a return for the preceding month in the form
33 prescribed by the tax commissioner showing the total
34 value of the tangible personal property so used, the
35 amount of taxable services purchased, the amount of tax
36 due from the permit holder, which amount shall be paid
37 to the tax commissioner with such return, and such
38 other information as the tax commissioner deems
39 necessary. The tax commissioner, upon written request
40 by the permit holder, may grant a reasonable extension
41 of time for the making and filing of returns and paying
42 the tax. Interest on such tax shall be chargeable on
43 every such extended payment at the rate determined in
44 accordance with section seventeen, article ten of this
45 chapter.

46 (c) A permit issued pursuant to this section shall
47 continue to be valid until expiration of the business's

48 registration year under article twelve of this chapter.
49 This permit shall automatically be renewed when the
50 business's business registration certificate is issued for
51 the next succeeding fiscal year, unless the permit is
52 surrendered by the holder or canceled for cause by the
53 tax commissioner.

54 (d) Persons who hold a direct payment permit which
55 has not been canceled shall not be required to pay the
56 tax to the vendor as otherwise provided in this article
57 or article fifteen of this chapter. Such persons shall
58 notify each vendor from whom tangible personal
59 property is purchased or leased or from whom services
60 are purchased of their direct payment permit number
61 and that the tax is being paid directly to the tax
62 commissioner. Upon receipt of such notice, such vendor
63 shall be absolved from all duties and liabilities imposed
64 by this chapter for the collection and remittance of the
65 tax with respect to sales, distributions, leases or storage
66 of tangible personal property and sales of services to
67 such permit holder. Vendors who make sales upon
68 which the tax is not collected by reason of the provisions
69 of this section shall maintain records in such manner
70 that the amount involved and identity of each such
71 purchaser may be ascertained.

72 (e) Upon the expiration, cancellation or surrender of
73 a direct payment permit, the provisions of this chapter,
74 without regard to this section, shall thereafter apply to
75 the person who previously held such permit, and such
76 person shall promptly so notify in writing vendors from
77 whom purchases, leases and storage of tangible personal
78 property are made of such cancellation or surrender.
79 Upon receipt of such notice, the vendor shall be subject
80 to the provisions of this chapter, without regard to this
81 section, with respect to all sales, distributions, leases, or
82 storage of tangible personal property, thereafter made
83 to or for such person.

ARTICLE 24. CORPORATION NET INCOME TAX.

*§11-24-6. Adjustments in determining West Virginia taxable income.

1 (a) *General.* — In determining West Virginia taxable

*Clerk's Note: This section was also amended by S.B. 536, which passed prior to this act.

2 income of a corporation, its taxable income as defined
3 for federal income tax purposes shall be adjusted and
4 determined before the apportionment provided by
5 section seven of this article, by the items specified in this
6 section.

7 (b) *Adjustments increasing federal taxable income.* —
8 There shall be added to federal taxable income, unless
9 already included in the computation of federal taxable
10 income, the following items except that adjustment (5)
11 shall be required only with respect to tax periods ending
12 after the thirty-first day of December, one thousand nine
13 hundred eighty-one:

14 (1) Interest or dividends on obligations or securities of
15 any state or of a political subdivision or authority
16 thereof;

17 (2) Interest or dividend income on obligations or
18 securities of any authority, commission or instrumental-
19 ity of the United States which the laws of the United
20 States exempt from federal income tax but not from
21 state income taxes;

22 (3) Income taxes imposed by this state or any other
23 taxing jurisdiction, to the extent deductible in determin-
24 ing federal taxable income and not credited against
25 federal income tax, and the taxes imposed by this state
26 for which credit against the taxes imposed by section
27 four is allowed by section nine; and

28 (4) The deferral value of certain income that is not
29 recognized for federal tax purposes, which value shall
30 be an amount equal to a percentage of the amount
31 allowed as a deduction in determining federal taxable
32 income pursuant to the accelerated cost recovery system
33 under section 168 of the Internal Revenue Code for the
34 federal taxable year, with the percentage of the federal
35 deduction to be added as follows with respect to the
36 following recovery property: Three-year property—no
37 modifications; five-year property—ten percent; ten-year
38 property—fifteen percent; fifteen-year public utility
39 property—twenty-five percent; and fifteen-year or
40 eighteen-year real property—thirty-five percent: *Pro-*
41 *vided*, That this modification shall not apply to any

42 person whose federal deduction is determined by the use
43 of the straight line method, or to any taxable year
44 beginning after the thirtieth day of June, one thousand
45 nine hundred eighty-seven.

46 (c) *Adjustments decreasing federal taxable income.* —
47 There shall be subtracted from federal taxable income:

48 (1) Any gain from the sale or other disposition of
49 property having a higher fair market value on the first
50 day of July, one thousand nine hundred sixty-seven, than
51 the adjusted basis at said date for federal income tax
52 purposes: *Provided*, That the amount of this adjustment
53 is limited to that portion of any such gain which does
54 not exceed the difference between such fair market
55 value and such adjusted basis;

56 (2) The amount of any refund or credit for overpay-
57 ment of income taxes imposed by this state or any other
58 taxing jurisdiction, to the extent properly included in
59 gross income for federal income tax purposes;

60 (3) The amount of dividends received, to the extent
61 included in federal taxable income: *Provided*, That this
62 modification shall not be made for taxable years
63 beginning after the thirtieth day of June, one thousand
64 nine hundred eighty-seven;

65 (4) Thirty-seven and one-half percent of the excess of
66 net long-term capital gain over net short-term capital
67 loss as defined in the laws of the United States:
68 *Provided*, That this modification shall not be made for
69 taxable years beginning after the thirtieth day of June,
70 one thousand nine hundred eighty-seven;

71 (5) The amount added to federal taxable income due
72 to the elimination of the reserve method for computation
73 of the bad debt deduction; and

74 (6) The full amount of interest expense actually
75 disallowed in determining federal taxable income which
76 was incurred or continued to purchase or carry obliga-
77 tions or securities of any state or of any political
78 subdivision thereof.

79 (d) *Adjustment resulting from recomputation of net*

80 *operating loss deduction.* — In determining the West
81 Virginia taxable income of a corporation entitled to a
82 net operating loss deduction for the taxable year for
83 federal income tax purposes, there shall be added to or
84 subtracted from the federal taxable income the amount
85 of an adjustment reflecting a recomputation of such net
86 operating loss deduction in which the adjustments
87 required by subsections (b) and (c) are made for each
88 taxable year involved in the computation of such net
89 operating loss deduction.

90 (e) *Special adjustments for expenditures for water and*
91 *air pollution control facilities.*

92 (1) If the taxpayer so elects under subdivision (2) of
93 this subsection, there shall be:

94 (A) Subtracted from federal taxable income the total
95 of the amounts paid or incurred during the taxable year
96 for the acquisition, construction or development within
97 this state of water pollution control facilities and air
98 pollution control facilities as defined in section 48 (h)
99 (12) (B) and (C) of the Internal Revenue Code, and

100 (B) Added to federal taxable income the total of the
101 amounts of any allowances for depreciation and amor-
102 tization of such water pollution control facilities and air
103 pollution control facilities, as so defined, to the extent
104 deductible in determining federal taxable income.

105 (2) The election referred to in subdivision (1) of this
106 subsection shall be made in the return filed within the
107 time prescribed by law (including extensions thereof)
108 for the taxable year in which such amounts were paid
109 or incurred. Such election shall be made in such
110 manner, and the scope of application of such election
111 shall be defined, as the tax commissioner may by
112 regulations prescribe, and shall be irrevocable when
113 made as to all amounts paid or incurred for any
114 particular water pollution control facility or air
115 pollution control facility.

116 (3) Notwithstanding any other provisions of this
117 subsection or of section seven to the contrary, if the
118 taxpayer's federal taxable income is subject to allocation

119 and apportionment under section seven, the adjustments
120 prescribed in paragraphs (A) and (B), subdivision (1) of
121 this subsection shall (instead of being made to the
122 taxpayer's federal taxable income before allocation and
123 apportionment thereof as provided in section seven) be
124 made to the portion of the taxpayer's net income,
125 computed without regard to such adjustments, allocated
126 and apportioned to this state in accordance with the
127 amounts of any allowances for depreciation and amortization
128 of such water pollution control facilities and air
129 pollution control facilities, as so defined, to the extent
130 deductible in determining federal taxable income.

131 (f) *Allowance for certain government obligations and*
132 *obligations secured by residential property.* — The West
133 Virginia taxable income of a taxpayer subject to this
134 article as adjusted in accordance with parts (b), (c), (d)
135 and (e) of this section shall be further adjusted by
136 multiplying such taxable income after such adjustment
137 by parts (b), (c), (d) and (e) by a fraction equal to one
138 minus a fraction:

139 (1) The numerator of which is the sum of the average
140 of the monthly beginning and ending account balances
141 during the taxable year (account balances to be deter-
142 mined at cost in the same manner that such obligations,
143 investments and loans are reported on Schedule L of the
144 Federal Form 1120) of the following:

145 (A) Obligations or securities of the United States, or
146 of any agency, authority, commission or instrumentality
147 of the United States and any other corporation or entity
148 created under the authority of the United States
149 Congress for the purpose of implementing or furthering
150 an objective of national policy;

151 (B) Obligations or securities of this state and any
152 political subdivision or authority thereof;

153 (C) Investments or loans primarily secured by mort-
154 gages, or deeds of trust, on residential property located
155 in this state and occupied by nontransients; and

156 (D) Loans primarily secured by a lien or security
157 agreement on residential property in the form of a

158 mobile home, modular home or double-wide, located in
159 this state and occupied by nontransients.

160 (2) The denominator of which is the average of the
161 monthly beginning and ending account balances of the
162 total assets of the taxpayer which are shown on Schedule
163 L of Federal Form 1120, which are filed by the taxpayer
164 with the Internal Revenue Service.

CHAPTER 142

(H. B. 3204—By Delegate Farley)

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

AN ACT to amend and reenact sections four-e, eleven, twelve, fifty-one and seventy-one, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to personal income taxes for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; changing certain applicable rates; allowing married persons an election to file separate West Virginia personal income tax returns even though they file a joint return for federal income tax purposes for the taxable year; providing a separate rate table for married persons filing separate returns; technical amendments clarifying certain reduction modifications; clarifying that employer withholding taxes are to be calculated using the new, higher personal exemption allowed for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; and providing for these amendments to apply to and for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six.

Be it enacted by the Legislature of West Virginia:

That sections four-e, eleven, twelve, fifty-one and seventy-one, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-4e. Rate of tax—Taxable years beginning on or after January 1, 1987.

§11-21-11. West Virginia taxable income of resident individual.

§11-21-12. West Virginia adjusted gross income of resident individual.

§11-21-51. Returns and liabilities.

§11-21-71. Requirement of withholding tax from wages.

***§11-21-4e. Rate of tax — Taxable years beginning on or after January 1, 1987.**

1 (a) *Rate of tax on individuals (except married individ-*
 2 *uals filing separate returns), individuals filing joint*
 3 *returns, heads of households, estates and trusts.* — The
 4 tax imposed by section three of this article on the West
 5 Virginia taxable income of every individual (except
 6 married individuals filing separate returns); every
 7 individual who is a head of a household in the determi-
 8 nation of his or her federal income tax for the taxable
 9 year; every husband and wife who file a joint return
 10 under this article; every individual who is entitled to file
 11 his or her federal income tax return for the taxable year
 12 as a surviving spouse; and every estate and trust shall
 13 be determined in accordance with the following table:

14 If the West Virginia	
15 taxable income is:	The tax is:
16 Not over \$10,000	3% of the taxable income
17 Over \$10,000 but not	\$300.00 plus 4% of excess
18 over \$25,000	over \$10,000
19 Over \$25,000 but not	\$900.00 plus 4.5% of excess
20 over \$40,000	over \$25,000
21 Over \$40,000 but not	\$1,575.00 plus 6% of excess
22 over \$60,000	over \$40,000
23 Over \$60,000	\$2,775.00 plus 6.5% of excess
24	over \$60,000

25 (b) *Rate of tax on married individuals filing separate*
 26 *returns.* — In the case of husband and wife filing
 27 separate returns under this article for the taxable year,
 28 the tax imposed by section three of this article on the
 29 West Virginia taxable income of each spouse shall be
 30 determined in accordance with the following table:

* Clerk's Note: This section was also amended by S. B. 536, which passed prior to this act.

31	If the West Virginia	
32	taxable income is:	The tax is:
33	Not over \$5,000	3% of the taxable income
34	Over \$5,000 but not	\$150.00 plus 4% of excess
35	over \$12,500	over \$5,000
36	Over \$12,500 but not	\$450.00 plus 4.5% of
37	over \$20,000	excess over \$12,500
38	Over \$20,000 but not	\$787.50 plus 6% of excess
39	over \$30,000	over \$20,000
40	Over \$30,000	\$1,387.50 plus 6.5% of
41		excess over \$30,000

42 (c) *Applicability of this section.* — The provisions of
 43 this section, as amended by this act, shall be applicable
 44 in determining the rate of tax imposed by this article
 45 for all taxable years beginning after the thirty-first day
 46 of December, one thousand nine hundred eighty-six, and
 47 shall be in lieu of the rates of tax specified in section
 48 four-d of this article.

***§11-21-11. West Virginia taxable income of resident individual.**

1 (a) *General.* — The West Virginia taxable income of
 2 a resident individual shall be his West Virginia adjusted
 3 gross income less his West Virginia personal exemp-
 4 tions, as determined under this part.

5 (b) *Husband and wife.*

6 (1) If the federal taxable income of husband and wife
 7 is determined on a separate federal return, their West
 8 Virginia taxable incomes shall be separately
 9 determined.

10 (2) If the federal taxable income of husband and wife
 11 is determined on a joint federal return, or if neither files
 12 a federal return:

13 (A) Their tax shall be determined on their joint West
 14 Virginia taxable income, or

* Clerk's Note: This section was also amended by S. B. 536, which passed prior to this act.

15 (B) Separate taxes may be determined on their
16 separate West Virginia taxable incomes if they so elect
17 if they comply with the requirements of the tax
18 commissioner in setting forth information on a single
19 form or on separate forms, as may be required by the
20 tax commissioner.

21 (3) If either husband or wife is a resident and the
22 other is a nonresident, separate taxes shall be deter-
23 mined on their separate West Virginia taxable incomes
24 on such single or separate forms as may be required by
25 the tax commissioner, unless both elect to determine
26 their joint West Virginia taxable income as if both were
27 residents.

28 (c) *Effective date.* — This section, as amended by this
29 act, shall apply to all taxable years beginning after the
30 thirty-first day of December, one thousand nine hundred
31 eighty-six.

***§11-21-12. West Virginia adjusted gross income of
resident individual.**

1 (a) *General.* — The West Virginia adjusted gross
2 income of a resident individual means his federal
3 adjusted gross income as defined in the laws of the
4 United States for the taxable year with the modifica-
5 tions specified in this section.

6 (b) *Modifications increasing federal adjusted gross*
7 *income.* — There shall be added to federal adjusted gross
8 income unless already included therein the following
9 items, except that modifications (5), (6) and (7) shall be
10 required only with respect to tax periods ending on or
11 after the first day of January, one thousand nine
12 hundred eighty-two:

13 (1) Interest income on obligations of any state other
14 than this state, or of a political subdivision of any such
15 other state unless created by compact or agreement to
16 which this state is a party;

* Clerk's Note: This section was also amended by S. B. 536, which passed prior to this act.

17 (2) Interest or dividend income on obligations or
18 securities of any authority, commission or instrumental-
19 ity of the United States, which the laws of the United
20 States exempt from federal income tax but not from
21 state income taxes;

22 (3) Income taxes imposed by this state or any other
23 taxing jurisdiction, to the extent deductible in determin-
24 ing federal adjusted gross income and not credited
25 against federal income tax: *Provided*, That this modifi-
26 cation shall not be made for taxable years beginning
27 after the thirty-first day of December, one thousand nine
28 hundred eighty-six;

29 (4) Interest on indebtedness incurred or continued to
30 purchase or carry obligations or securities the income
31 from which is exempt from tax under this article, to the
32 extent deductible in determining federal adjusted gross
33 income;

34 (5) Interest on a depository institution tax-exempt
35 savings certificate which is allowed as an exclusion from
36 federal gross income under section 128 of the Internal
37 Revenue Code, for the federal taxable year;

38 (6) The amount allowed as a deduction from federal
39 gross income under section 221 of the Internal Revenue
40 Code by married couples who file a joint federal return
41 for the federal taxable year: *Provided*, That this
42 modification shall not be made for taxable years
43 beginning after the thirty-first day of December, one
44 thousand nine hundred eighty-six; and

45 (7) The deferral value of certain income that is not
46 recognized for federal tax purposes, which value shall
47 be an amount equal to a percentage of the amount
48 allowed as a deduction in determining federal adjusted
49 gross income pursuant to the accelerated cost recovery
50 system under section 168 of the Internal Revenue Code
51 for the federal taxable year, with the percentage of the
52 federal deduction to be added as follows with respect to
53 the following recovery property: Three-year property—
54 no modification; five-year property—ten percent; ten-
55 year property—fifteen percent; fifteen-year public
56 utility property—twenty-five percent; and fifteen-year

57 real property—thirty-five percent: *Provided*, That this
58 modification shall not apply to any person whose federal
59 deduction is determined by the use of the straight line
60 method: *Provided, however*, That this modification shall
61 not be made for taxable years beginning after the thirty-
62 first day of December, one thousand nine hundred
63 eighty-six;

64 (c) *Modifications reducing federal adjusted gross*
65 *income.* — There shall be subtracted from federal
66 adjusted gross income to the extent included therein:

67 (1) Interest income on obligations of the United States
68 and its possessions to the extent includable in gross
69 income for federal income tax purposes;

70 (2) Interest or dividend income on obligations or
71 securities of any authority, commission or instrumental-
72 ity of the United States to the extent includible in gross
73 income for federal income tax purposes but exempt
74 from state income taxes under the laws of the United
75 States, including federal interest dividends paid to
76 shareholders of a regulated investment company, under
77 section 852 of the Internal Revenue Code for taxable
78 years ending after the thirtieth day of June, one
79 thousand nine hundred eighty-seven;

80 (3) Any gain from the sale or other disposition of
81 property having a higher fair market value on the first
82 day of January, one thousand nine hundred sixty-one,
83 than the adjusted basis at said date for federal income
84 tax purposes: *Provided*, That the amount of this
85 adjustment is limited to that portion of any such gain
86 which does not exceed the difference between such fair
87 market value and such adjusted basis: *Provided,*
88 *however*, That if such gain is considered a long-term
89 capital gain for federal income tax purposes, the
90 modification shall be limited to forty percent of such
91 portion of the gain: *Provided further*, That this modifi-
92 cation shall not be made for taxable years beginning
93 after the thirty-first day of December, one thousand nine
94 hundred eighty-six;

95 (4) The amount of any refund or credit for overpay-
96 ment of income taxes imposed by this state, or any other

97 taxing jurisdiction, to the extent properly included in
98 gross income for federal income tax purposes;

99 (5) Annuities, retirement allowances, returns of
100 contributions and any other benefit received under the
101 public employees retirement system, the department of
102 public safety death, disability and retirement fund, the
103 state teachers retirement system and all forms of
104 military retirement, including regular armed forces,
105 reserves and national guard, including any survivorship
106 annuities derived therefrom, to the extent includible in
107 gross income for federal income tax purposes: *Provided*,
108 That notwithstanding any provisions in this code to the
109 contrary this modification shall be limited to the first
110 two thousand dollars of benefits received under the
111 public employees retirement system, the state teachers
112 retirement system and all forms of military retirement
113 including regular armed forces, reserves and national
114 guard, including any survivorship annuities derived
115 therefrom, to the extent includible in gross income for
116 federal income tax purposes for taxable years beginning
117 after the thirty-first day of December, one thousand nine
118 hundred eighty-six;

119 (6) Retirement income received in the form of pen-
120 sions and annuities after the thirty-first day of De-
121 cember, one thousand nine hundred seventy-nine, under
122 any police or firemen's retirement system, including any
123 survivorship annuities derived therefrom, to the extent
124 includible in gross income for federal income tax
125 purposes;

126 (7) Federal adjusted gross income in the amount of six
127 thousand dollars received from any source after the
128 thirty-first day of December, one thousand nine hundred
129 eighty-six, by any person who has attained the age of
130 sixty-five on or before the last day of the taxable year,
131 or by any person certified by proper authority as
132 permanently and totally disabled, regardless of age, on
133 or before the last day of the taxable year, to the extent
134 includible in federal adjusted gross income for federal
135 tax purposes: *Provided*, That if a person has a medical
136 certification from a prior year and he is still perman-
137 ently and totally disabled, a copy of the original

138 certificate is acceptable as proof of disability. A copy of
139 the form filed for the federal disability income tax
140 exclusion is acceptable: *Provided, however, That*

141 (i) Where the total modification under subdivisions
142 (1), (2), (5) and (6) of this subsection is eight thousand
143 dollars per person or more, no deduction shall be
144 allowed under this subdivision, and

145 (ii) Where the total modification under subdivisions
146 (1), (2), (5) and (6) of this subsection is less than eight
147 thousand dollars per person, the total modification
148 allowed under this subdivision for all gross income
149 received by such person shall be limited to the differ-
150 ence between eight thousand dollars and the sum of
151 modifications under such subdivisions;

152 (8) Federal adjusted gross income in the amount of six
153 thousand dollars received from any source after the
154 thirty-first day of December, one thousand nine hundred
155 eighty-six, by the surviving spouse of any person who
156 had attained the age of sixty-five or who had been
157 certified as permanently and totally disabled, to the
158 extent includible in federal adjusted gross income for
159 federal tax purposes: *Provided, That*

160 (i) Where the total modification under subdivisions
161 (1), (2), (5), (6) and (7) of this subsection is eight thousand
162 dollars or more, no deduction shall be allowed under this
163 subdivision, and

164 (ii) Where the total modification under subdivisions
165 (1), (2), (5), (6) and (7) of this subsection is less than eight
166 thousand dollars per person, the total modification
167 allowed under this subdivision for all gross income
168 received by such person shall be limited to the differ-
169 ence between eight thousand dollars and the sum of such
170 subdivisions;

171 (9) Any pay or allowances received, after the thirty-
172 first day of December, one thousand nine hundred
173 seventy-nine, by West Virginia residents who have not
174 attained the age of sixty-five, as compensation for active
175 service in the armed forces of the United States:
176 *Provided, That* such deduction shall be limited to an

177 amount not to exceed four thousand dollars: *Provided,*
178 *however,* That this modification shall not be made for
179 taxable years beginning after the thirty-first day of
180 December, one thousand nine hundred eighty-six;

181 (10) Gross income to the extent included in federal
182 adjusted gross income under section 86 of the Internal
183 Revenue Code for federal income tax purposes:
184 *Provided,* That this modification shall not be made for
185 taxable years beginning after the thirty-first day of
186 December, one thousand nine hundred eighty-six;

187 (11) The amount of any lottery prize awarded by the
188 West Virginia state lottery commission, to the extent
189 properly included in gross income for federal income tax
190 purposes; and

191 (12) Any other income which this state is prohibited
192 from taxing under the laws of the United States.

193 (d) *Modification for West Virginia fiduciary adjust-*
194 *ment.* — There shall be added to or subtracted from
195 federal adjusted gross income, as the case may be, the
196 taxpayer's share, as beneficiary of an estate or trust, of
197 the West Virginia fiduciary adjustment determined
198 under section nineteen of this article.

199 (e) *Partners.* — The amounts of modifications re-
200 quired to be made under this section by a partner, which
201 relate to items of income, gain, loss or deduction of a
202 partnership, shall be determined under section seven-
203 teen of this article.

204 (f) *Husband and wife.* — If husband and wife deter-
205 mine their federal income tax on a joint return but
206 determine their West Virginia income taxes separately,
207 they shall determine their West Virginia adjusted gross
208 incomes separately as if their federal adjusted gross
209 incomes had been determined separately.

*§11-21-51. Returns and liabilities.

1 (a) *General.* — On or before the fifteenth day of the
2 fourth month following the close of a taxable year, an

*Clerk's Note: This section was also amended by S. B. 536, which passed prior to this act.

3 income tax return under this article shall be made and
4 filed by or for:

5 (1) Every resident individual required to file a federal
6 income tax return for the taxable year, or having West
7 Virginia adjusted gross income for the taxable year,
8 determined under section twelve, in excess of the sum
9 of his West Virginia personal exemptions;

10 (2) Every resident estate or trust required to file a
11 federal income tax return for the taxable year, or
12 having any West Virginia taxable income for the
13 taxable year, determined under section eighteen;

14 (3) Every nonresident individual having any West
15 Virginia adjusted gross income for the taxable year,
16 determined under section thirty-two, in excess of the
17 sum of his West Virginia personal exemptions; and

18 (4) Every nonresident estate or trust having items of
19 income or gain derived from West Virginia sources,
20 determined in accordance with the applicable rules of
21 section thirty-two as in the case of a nonresident
22 individual, in excess of its West Virginia exemption.

23 (b) *Husband and wife.*

24 (1) If the federal income tax liability of husband or
25 wife is determined on a separate federal return, their
26 West Virginia income tax liabilities and returns shall
27 be separate.

28 (2) If the federal income tax liabilities of husband and
29 wife other than a husband and wife described in
30 subdivision (3) of this subsection (b) are determined on
31 a joint federal return, or if neither files a federal return:

32 (A) They shall file a joint West Virginia income tax
33 return, and their tax liabilities shall be joint and
34 several, or

35 (B) They may elect to file separate West Virginia
36 income tax returns on a single or separate form, as may
37 be required by the tax commissioner, if they comply
38 with the requirements of the tax commissioner in
39 setting forth information, and in such event their tax
40 liabilities shall be separate.

41 (3) If either husband or wife is a resident and the
42 other is a nonresident, they shall file separate West
43 Virginia income tax returns on such single or separate
44 forms as may be required by the tax commissioner, and
45 in such event their tax liabilities shall be separate.

46 (c) *Decedents.* — The return for any deceased individ-
47 ual shall be made and filed by his executor, adminis-
48 trator, or other person charged with his property.

49 (d) *Individuals under a disability.* — The return for
50 an individual who is unable to make a return by reason
51 of minority or other disability shall be made and filed
52 by his guardian, committee, fiduciary or other person
53 charged with the care of his person or property (other
54 than a receiver in possession of only a part of his
55 property), or by his duly authorized agent.

56 (e) *Estates and trusts.* — The return for an estate or
57 trust shall be made and filed by the fiduciary.

58 (f) *Joint fiduciaries.* — If two or more fiduciaries are
59 acting jointly, the return may be made by any one of
60 them.

61 (g) *Tax a debt.* — Any tax under this article, and any
62 increase, interest or penalty thereon, shall, from the
63 time it is due and payable, be a personal debt of the
64 person liable to pay the same, to the state of West
65 Virginia.

66 (h) *Cross reference.* — For provisions as to information
67 returns by partnerships, employers and other persons,
68 see section fifty-eight.

69 (i) *Effective date.* — This section, as amended by this
70 act, shall apply to all taxable years beginning after the
71 thirty-first day of December, one thousand nine hundred
72 eighty-six.

§11-21-71. Requirement of withholding tax from wages.

1 (a) *General.* — Every employer maintaining an office
2 or transacting business within this state and making
3 payment of any wage taxable under this article to a
4 resident or nonresident individual shall deduct and
5 withhold from such wages for each payroll period a tax

6 computed in such manner as to result, so far as
7 practicable, in withholding from the employee's wages
8 during each calendar year an amount substantially
9 equivalent to the tax reasonably estimated to be due
10 under this article resulting from the inclusion in the
11 employee's West Virginia adjusted gross income of his
12 wages received during such calendar year. The method
13 of determining the amount to be withheld shall be
14 prescribed by the tax commissioner, with due regard to
15 the West Virginia withholding exemption of the em-
16 ployee. This section shall not apply to payments by the
17 United States for service in the armed forces of the
18 United States.

19 (b) *Withholding exemptions.* — For purposes of this
20 section:

21 (1) An employee shall be entitled to the same number
22 of West Virginia withholding exemptions as the number
23 of withholding exemptions to which he is entitled for
24 federal income tax withholding purposes. An employer
25 may rely upon the number of federal withholding
26 exemptions claimed by the employee, except where the
27 employee claims a higher number of West Virginia
28 withholding exemptions.

29 (2) With respect to any taxable year prior to the first
30 day of January, one thousand nine hundred eighty-three,
31 the amount of each West Virginia exemption shall be
32 six hundred dollars whether the individual is a resident
33 or nonresident. With respect to any taxable year
34 beginning on or after the first day of January, one
35 thousand nine hundred eighty-three, and prior to the
36 first day of January, one thousand nine hundred eighty-
37 four, said exemption shall be seven hundred dollars and
38 with respect to any taxable year beginning on or after
39 the first day of January, one thousand nine hundred
40 eighty-four, and prior to the first day of January, one
41 thousand nine hundred eighty-seven, said exemption
42 shall be eight hundred dollars. With respect to any
43 taxable year beginning after the thirty-first day of
44 December, one thousand nine hundred eighty-six, said
45 exemption shall be two thousand dollars.

46 (c) *Exception for certain nonresidents.* — If the income
47 tax law of another state of the United States or of the
48 District of Columbia results in its residents being
49 allowed a credit under section forty sufficient to offset
50 all taxes required by this article to be withheld from the
51 wages of an employee, the tax commissioner may by
52 regulation relieve the employers of such employees from
53 the withholding requirements of this article with
54 respect to such employees.

55 (d) *Effective date.* — The provisions of this section, as
56 amended by this act, shall apply to all taxable years
57 beginning after the thirty-first day of December, one
58 thousand nine hundred eighty-six.

CHAPTER 143

(H. B. 2460—By Delegates Phillips and Murphy)

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

AN ACT to amend and reenact section three, article one, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to employment security; definitions; and exemption from the application of the chapter of all students who are employed and also enrolled at nonprofit or public educational institution.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.

*§21A-1-3. Definitions.

1 As used in this chapter, unless the context clearly
2 requires otherwise:

* Clerk's Note: This section was also amended by H. B. 2727, which passed subsequent to this act.

3 "Administration fund" means the employment secur-
4 ity administration fund, from which the administrative
5 expenses under this chapter shall be paid.

6 "Annual payroll" means the total amount of wages for
7 employment paid by an employer during a twelve-
8 month period ending with June thirty of any calendar
9 year.

10 "Average annual payroll" means the average of the
11 last three annual payrolls of an employer.

12 "Base period" means the first four out of the last five
13 completed calendar quarters immediately preceding the
14 first day of the individual benefit year.

15 "Base period employer" means any employer who in
16 the base period for any benefit year paid wages to an
17 individual who filed claim for unemployment compen-
18 sation within such benefit year.

19 "Base period wages" means wages paid to an individ-
20 ual during the base period by all his base period
21 employers.

22 "Benefit year" with respect to an individual means the
23 fifty-two-week period beginning with the first day of the
24 calendar week in which a valid claim is effective, and
25 thereafter the fifty-two-week period beginning with the
26 first day of the calendar week in which such individual
27 next files a valid claim for benefits after the termination
28 of his last preceding benefit year. An initial claim for
29 benefits filed in accordance with the provisions of this
30 chapter shall be deemed to be a valid claim within the
31 purposes of this definition if the individual has been
32 paid wages in his base period sufficient to make him
33 eligible for benefits under the provisions of this chapter.

34 "Benefits" means the money payable to an individual
35 with respect to his unemployment.

36 "Board" means board of review.

37 "Calendar quarter" means the period of three consec-
38 utive calendar months ending on March thirty-one, June
39 thirty, September thirty or December thirty-one, or the

40 equivalent thereof as the commissioner may by regula-
41 tion prescribe.

42 "Commissioner" means the employment security
43 commissioner.

44 "Computation date" means June thirty of the year
45 immediately preceding the January one on which an
46 employer's contribution rate becomes effective.

47 "Employing unit" means an individual, or type of
48 organization, including any partnership, association,
49 trust estate, joint-stock company, insurance company,
50 corporation (domestic or foreign), state or political
51 subdivision thereof, or their instrumentalities, as
52 provided in paragraph (b), subdivision (9) of the
53 definition of "employment" in this section, institution of
54 higher education, or the receiver, trustee in bankruptcy,
55 trustee or successor thereof, or the legal representative
56 of a deceased person, which has on January first, one
57 thousand nine hundred thirty-five, or subsequent
58 thereto, had in its employ one or more individuals
59 performing service within this state.

60 "Employer" means:

61 (1) Until January one, one thousand nine hundred
62 seventy-two, any employing unit which for some portion
63 of a day, not necessarily simultaneously, in each of
64 twenty different calendar weeks, which weeks need not
65 be consecutive, within either the current calendar year,
66 or the preceding calendar year, has had in employment
67 four or more individuals irrespective of whether the
68 same individuals were or were not employed on each of
69 such days;

70 (2) Any employing unit which is or becomes a liable
71 employer under any federal unemployment tax act;

72 (3) Any employing unit which has acquired or ac-
73 quires the organization, trade or business, or substan-
74 tially all the assets thereof, of an employing unit which
75 at the time of such acquisition was an employer subject
76 to this chapter;

77 (4) Any employing unit which, after December thirty-
78 one, one thousand nine hundred sixty-three, and until

79 January one, one thousand nine hundred seventy-two, in
80 any one calendar quarter, in any calendar year, has in
81 employment four or more individuals and has paid
82 wages for employment in the total sum of five thousand
83 dollars or more, or which, after such date, has paid
84 wages for employment in any calendar year in the sum
85 total of twenty thousand dollars or more;

86 (5) Any employing unit which, after December thirty-
87 one, one thousand nine hundred sixty-three, and until
88 January one, one thousand nine hundred seventy-two, in
89 any three-week period, in any calendar year, has in
90 employment ten or more individuals;

91 (6) For the effective period of its election pursuant to
92 section three, article five of this chapter, any employing
93 unit which has elected to become subject to this chapter;

94 (7) Any employing unit which, after December thirty-
95 one, one thousand nine hundred seventy-one, (i) in any
96 calendar quarter in either the current or preceding
97 calendar year paid for service in employment wages of
98 one thousand five hundred dollars or more, or (ii) for
99 some portion of a day in each of twenty different
100 calendar weeks, whether or not such weeks were
101 consecutive, in either the current or the preceding
102 calendar year had in employment at least one individual
103 (irrespective of whether the same individual was in
104 employment in each such day) except as provided in
105 subdivisions eleven and twelve hereof;

106 (8) Any employing unit for which service in employ-
107 ment, as defined in subdivision (9) of the definition of
108 "employment" in this section, is performed after
109 December thirty-one, one thousand nine hundred
110 seventy-one;

111 (9) Any employing unit for which service in employ-
112 ment, as defined in subdivision (10) of the definition of
113 "employment" in this section, is performed after
114 December thirty-one, one thousand nine hundred
115 seventy-one;

116 (10) Any employing unit for which service in employ-
117 ment, as defined in paragraphs (b) and (c) of subdivision

118 (9) of the definition of "employment" in this section, is
119 performed after December thirty-one, one thousand nine
120 hundred seventy-seven;

121 (11) Any employing unit for which agricultural labor,
122 as defined in subdivision (12) of the definition of
123 "employment" in this section, is performed after
124 December thirty-one, one thousand nine hundred
125 seventy-seven;

126 (12) Any employing unit for which domestic service
127 in employment, as defined in subdivision (13) of the
128 definition of "employment" in this section, is performed
129 after December thirty-one, one thousand nine hundred
130 seventy-seven.

131 "Employment," subject to the other provisions of this
132 section, means:

133 (1) Service, including service in interstate commerce,
134 performed for wages or under any contract of hire,
135 written or oral, express or implied;

136 (2) Any service performed prior to January one, one
137 thousand nine hundred seventy-two, which was employ-
138 ment as defined in this section prior to such date and,
139 subject to the other provisions of this section, service
140 performed after December thirty-one, one thousand nine
141 hundred seventy-one, by an employee, as defined in
142 section 3306(i) of the Federal Unemployment Tax Act,
143 including service in interstate commerce;

144 (3) Any service performed prior to January one, one
145 thousand nine hundred seventy-two, which was employ-
146 ment as defined in this section prior to such date and,
147 subject to the other provisions of this section, service
148 performed after December thirty-one, one thousand nine
149 hundred seventy-one, including service in interstate
150 commerce, by any officer of a corporation;

151 (4) An individual's entire service, performed within or
152 both within and without this state if: (a) The service is
153 localized in this state or (b) the service is not localized
154 in any state but some of the service is performed in this
155 state and (i) the base of operations, or, if there is no base
156 of operations, then the place from which such service is

157 directed or controlled, is in this state; or (ii) the base of
158 operations or place from which such service is directed
159 or controlled is not in any state in which some part of
160 the service is performed but the individual's residence
161 is in this state;

162 (5) Service not covered under paragraph four of this
163 subdivision and performed entirely without this state
164 with respect to no part of which contributions are
165 required and paid under an unemployment compensa-
166 tion law of any other state or of the federal government,
167 shall be deemed to be employment subject to this
168 chapter if the individual performing such services is a
169 resident of this state and the commissioner approves the
170 election of the employing unit for whom such services
171 are performed that the entire service of such individual
172 shall be deemed to be employment subject to this
173 chapter;

174 (6) Service shall be deemed to be localized within a
175 state, if: (a) The service is performed entirely within
176 such state; or (b) the service is performed both within
177 and without such state, but the service performed
178 without such state is incidental to the individual's
179 service within this state, as, for example, is temporary
180 or transitory in nature or consists of isolated
181 transactions;

182 (7) Services performed by an individual for wages
183 shall be deemed to be employment subject to this
184 chapter unless and until it is shown to the satisfaction
185 of the commissioner that: (a) Such individual has been
186 and will continue to be free from control or direction
187 over the performance of such services, both under his
188 contract of service and in fact; and (b) such service is
189 either outside the usual course of the business for which
190 such service is performed or that such service is
191 performed outside of all the places of business of the
192 enterprise for which such service is performed; and (c)
193 such individual is customarily engaged in an independ-
194 ently established trade, occupation, profession or
195 business;

196 (8) All service performed by an officer or member of

197 the crew of an American vessel (as defined in section
198 three hundred five of an act of Congress entitled Social
199 Security Act Amendment of 1946, approved August
200 tenth, one thousand nine hundred forty-six), on or in
201 connection with such vessel, provided that the operating
202 office, from which the operations of such vessel operat-
203 ing on navigable waters within and without the United
204 States is ordinarily and regularly supervised, managed,
205 directed and controlled, is within this state;

206 (9) (a) Service performed after December thirty-one,
207 one thousand nine hundred seventy-one, by an individual
208 in the employ of this state or any of its instrumentalities
209 (or in the employ of this state and one or more other
210 states or their instrumentalities) for a hospital or
211 institution of higher education located in this state:
212 *Provided*, That such service is excluded from "employ-
213 ment" as defined in the Federal Unemployment Tax Act
214 solely by reason of section 3306 (c) (7) of that act and
215 is not excluded from "employment" under subdivision
216 (11) of the exclusion from employment.

217 (b) Service performed after December thirty-one, one
218 thousand nine hundred seventy-seven, in the employ of
219 this state or any of its instrumentalities or political
220 subdivisions thereof or any of its instrumentalities or
221 any instrumentality of more than one of the foregoing
222 or any instrumentality of any foregoing and one or more
223 other states or political subdivisions: *Provided*, That
224 such service is excluded from "employment" as defined
225 in the Federal Unemployment Tax Act by section 3306
226 (c) (7) of that act and is not excluded from "employment"
227 under subdivision (15) of the exclusion from employment
228 in this section; and

229 (c) Service performed after December thirty-one, one
230 thousand nine hundred seventy-seven, in the employ of
231 a nonprofit educational institution which is not an
232 institution of higher education;

233 (10) Service performed after December thirty-one,
234 one thousand nine hundred seventy-one, by an individual
235 in the employ of a religious, charitable, educational or

236 other organization but only if the following conditions
237 are met:

238 (a) The service is excluded from "employment" as
239 defined in the Federal Unemployment Tax Act solely by
240 reason of section 3306(c) (8) of that act; and

241 (b) The organization had four or more individuals in
242 employment for some portion of a day in each of twenty
243 different weeks, whether or not such weeks were
244 consecutive, within either the current or preceding
245 calendar year, regardless of whether they were em-
246 ployed at the same moment of time;

247 (11) Service of an individual who is a citizen of the
248 United States, performed outside the United States
249 after December thirty-one, one thousand nine hundred
250 seventy-one (except in Canada and in the case of Virgin
251 Islands after December thirty-one, one thousand nine
252 hundred seventy-one, and before January one of the year
253 following the year in which the secretary of labor
254 approves for the first time an unemployment insurance
255 law submitted to him by the Virgin Islands for appro-
256 val) in the employ of an American employer (other than
257 service which is deemed "employment" under the
258 provisions of subdivision (4), (5) or (6) of this definition
259 of "employment" or the parallel provisions of another
260 state's law) if:

261 (a) The employer's principal place of business in the
262 United States is located in this state; or

263 (b) The employer has no place of business in the
264 United States, but (i) the employer is an individual who
265 is a resident of this state; or (ii) the employer is a
266 corporation which is organized under the laws of this
267 state; or (iii) the employer is a partnership or a trust
268 and the number of the partners or trustees who are
269 residents of this state is greater than the number who
270 are residents of any one other state; or

271 (c) None of the criteria of subparagraphs (a) and (b)
272 of this subdivision (11) is met but the employer has
273 elected coverage in this state or, the employer having
274 failed to elect coverage in any state, the individual has

275 filed a claim for benefits, based on such service, under
276 the law of this state.

277 An "American employer," for purposes of this subdivi-
278 sion (11), means a person who is (i) an individual who
279 is a resident of the United States; or (ii) a partnership
280 if two thirds or more of the partners are residents of
281 the United States; or (iii) a trust, if all of the trustees
282 are residents of the United States; or (iv) a corporation
283 organized under the laws of the United States or of any
284 state;

285 (12) Service performed after December thirty-one,
286 one thousand nine hundred seventy-seven, by an individ-
287 ual in agricultural labor as defined in subdivision

288 (5) of the exclusions from employment in this section
289 when:

290 (a) Such service is performed for a person who (i)
291 during any calendar quarter in either the current or the
292 preceding calendar year paid remuneration in cash of
293 twenty thousand dollars or more to individuals em-
294 ployed in agricultural labor (ii) for some portion of a day
295 in each of twenty different calendar weeks, whether or
296 not such weeks were consecutive, in either the current
297 or the preceding calendar year, employed in agricultu-
298 ral labor ten or more individuals, regardless of whether
299 they were employed at the same moment of time;

300 (b) Such service is not performed in agricultural
301 labor if performed before January one, one thousand
302 nine hundred eighty-six, by an individual who is an
303 alien admitted to the United States to perform service
304 in agricultural labor pursuant to sections 214 (c) and 101
305 (a) (15) (H) of the Immigration and Nationality Act;

306 (c) For the purposes of the definition of employment,
307 any individual who is a member of a crew furnished by
308 a crew leader to perform service in agricultural labor
309 for any other person shall be treated as an employee of
310 such crew leader (i) if such crew leader holds a valid
311 certificate of registration under the Farm Labor
312 Contractor Registration Act of 1963; or substantially all
313 the members of such crew operate or maintain tractors,

314 mechanized harvesting or crop-dusting equipment, or
315 any other mechanized equipment, which is provided by
316 such crew leader; and (ii) if such individual is not an
317 employee of such other person within the meaning of
318 subdivision (7) of the definition of employer;

319 (d) For the purposes of this subdivision (12), in the
320 case of any individual who is furnished by a crew leader
321 to perform service in agricultural labor for any other
322 person and who is not treated as an employee of such
323 crew leader under subparagraph (c) of this subdivision
324 (12), (i) such other person and not the crew leader shall
325 be treated as the employer of such individual; and (ii)
326 such other person shall be treated as having paid cash
327 remuneration to such individual in an amount equal to
328 the amount of cash remuneration paid to such individual
329 by the crew leader (either on his own behalf or on behalf
330 of such other person) for the service in agricultural
331 labor performed for such other person;

332 (e) For the purposes of this subdivision (12), the term
333 "crew leader" means an individual who (i) furnishes
334 individuals to perform service in agricultural labor for
335 any other person, (ii) pays (either on his own behalf or
336 on behalf of such other person) the individuals so
337 furnished by him for the service in agricultural labor
338 performed by them, and (iii) has not entered into a
339 written agreement with such other person under which
340 such individual is designated as an employee of such
341 other person;

342 (13) The term "employment" shall include domestic
343 service after December thirty-one, one thousand nine
344 hundred seventy-seven, in a private home, local college
345 club or local chapter of a college fraternity or sorority
346 performed for a person who paid cash remuneration of
347 one thousand dollars or more after December thirty-one,
348 one thousand nine hundred seventy-seven, in any
349 calendar quarter in the current calendar year or the
350 preceding calendar year to individuals employed in such
351 domestic service.

352 Notwithstanding the foregoing definition of "employ-
353 ment," if the services performed during one half or more

354 of any pay period by an employee for the person
355 employing him constitute employment, all the services
356 of such employee for such period shall be deemed to be
357 employment; but if the services performed during more
358 than one half of any such pay period by an employee for
359 the person employing him do not constitute employment,
360 then none of the services of such employee for such
361 period shall be deemed to be employment.

362 The term "employment" shall not include:

363 (1) Service performed in the employ of this state or
364 any political subdivision thereof, or any instrumentality
365 of this state or its subdivisions, except as otherwise
366 provided herein until December thirty-one, one thou-
367 sand nine hundred seventy-seven;

368 (2) Service performed directly in the employ of
369 another state, or its political subdivisions, except as
370 otherwise provided in paragraph (a), subdivision (9) of
371 the definition of "employment," until December thirty-
372 one, one thousand nine hundred seventy-seven;

373 (3) Service performed in the employ of the United
374 States or any instrumentality of the United States
375 exempt under the constitution of the United States from
376 the payments imposed by this law, except that to the
377 extent that the Congress of the United States shall
378 permit states to require any instrumentalities of the
379 United States to make payments into an unemployment
380 fund under a state unemployment compensation law, all
381 of the provisions of this law shall be applicable to such
382 instrumentalities and to service performed for such
383 instrumentalities in the same manner, to the same
384 extent and on the same terms as to all other employers,
385 employing units, individuals and services: *Provided,*
386 That if this state shall not be certified for any year by
387 the secretary of labor under section 1603(c) of the
388 Federal Internal Revenue Code, the payments required
389 of such instrumentalities with respect to such year shall
390 be refunded by the commissioner from the fund in the
391 same manner and within the same period as is provided
392 in section nineteen, article five of this chapter, with
393 respect to payments erroneously collected;

394 (4) Service performed after June thirty, one thousand
395 nine hundred thirty-nine, with respect to which unem-
396 ployment compensation is payable under the Railroad
397 Unemployment Insurance Act and service with respect
398 to which unemployment benefits are payable under an
399 unemployment compensation system for maritime
400 employees established by an act of Congress. The
401 commissioner may enter into agreements with the
402 proper agency established under such an act of Congress
403 to provide reciprocal treatment to individuals who, after
404 acquiring potential rights to unemployment compensa-
405 tion under an act of Congress, or who have, after
406 acquiring potential rights to unemployment compensa-
407 tion under an act of Congress, acquired rights to benefit
408 under this chapter. Such agreement shall become
409 effective ten days after such publications which shall
410 comply with the general rules of the department;

411 (5) Service performed by an individual in agricultural
412 labor, except as provided in subdivision (12) of the
413 definition of "employment" in this section. For purposes
414 of this subdivision (5), the term "agricultural labor"
415 includes all services performed:

416 (a) On a farm, in the employ of any person, in
417 connection with cultivating the soil, or in connection
418 with raising or harvesting any agricultural or horticul-
419 tural commodity, including the raising, shearing,
420 feeding, caring for, training and management of
421 livestock, bees, poultry, and fur-bearing animals and
422 wildlife;

423 (b) In the employ of the owner or tenant or other
424 operator of a farm, in connection with the operation,
425 management, conservation, improvement or mainte-
426 nance of such farm and its tools and equipment, or in
427 salvaging timber or clearing land of brush and other
428 debris left by a hurricane, if the major part of such
429 service is performed on a farm;

430 (c) In connection with the production or harvesting of
431 any commodity defined as an agricultural commodity in
432 section fifteen (g) of the Agricultural Marketing Act, as
433 amended, or in connection with the ginning of cotton,

434 or in connection with the operation or maintenance of
435 ditches, canals, reservoirs or waterways, not owned or
436 operated for profit, used exclusively for supplying and
437 storing water for farming purposes;

438 (d) (i) In the employ of the operator of a farm in
439 handling, planting, drying, packing, packaging, process-
440 ing, freezing, grading, storing or delivering to storage
441 or to market or to a carrier for transportation to market,
442 in its unmanufactured state, any agricultural or
443 horticultural commodity; but only if such operator
444 produced more than one half of the commodity with
445 respect to which such service is performed; or (ii) in the
446 employ of a group of operators of farms (or a cooperative
447 organization of which such operators are members) in
448 the performance of service described in clause (i), but
449 only if such operators produced more than one half of
450 the commodity with respect to which such service is
451 performed; but the provisions of clauses (i) and (ii) shall
452 not be deemed to be applicable with respect to service
453 performed in connection with commercial canning or
454 commercial freezing or in connection with any agricul-
455 tural or horticultural commodity after its delivery to a
456 terminal market for distribution for consumption;

457 (e) On a farm operated for profit if such service is not
458 in the course of the employer's trade or business or is
459 domestic service in a private home of the employer. As
460 used in this subdivision (5), the term "farm" includes
461 stock, dairy, poultry, fruit, fur-bearing animals, truck
462 farms, plantations, ranches, greenhouses, ranges and
463 nurseries, or other similar land areas or structures used
464 primarily for the raising of any agricultural or horti-
465 cultural commodities;

466 (6) Domestic service in a private home except as
467 provided in subdivision (13) of the definition of "employ-
468 ment" in this section;

469 (7) Service performed by an individual in the employ
470 of his son, daughter or spouse;

471 (8) Service performed by a child under the age of
472 eighteen years in the employ of his father or mother;

473 (9) Service as an officer or member of a crew of an
474 American vessel, performed on or in connection with
475 such vessel, if the operating office, from which the
476 operations of the vessel operating on navigable waters
477 within or without the United States are ordinarily and
478 regularly supervised, managed, directed and controlled,
479 is without this state;

480 (10) Service performed by agents of mutual fund
481 broker-dealers or insurance companies, exclusive of
482 industrial insurance agents, or by agents of investment
483 companies, who are compensated wholly on a commis-
484 sion basis;

485 (11) Service performed (i) in the employ of a church
486 or convention or association of churches, or an organi-
487 zation which is operated primarily for religious pur-
488 poses and which is operated, supervised, controlled or
489 principally supported by a church or convention or
490 association of churches; or (ii) by a duly ordained,
491 commissioned or licensed minister of a church in the
492 exercise of his ministry or by a member of a religious
493 order in the exercise of duties required by such order;
494 or (iii) prior to January one, one thousand nine hundred
495 seventy-eight, in the employ of a school which is not an
496 institution of higher education; or (iv) in a facility
497 conducted for the purpose of carrying out a program of
498 rehabilitation for individuals whose earning capacity is
499 impaired by age or physical or mental deficiency or
500 injury or providing remunerative work for individuals
501 who because of their impaired physical or mental
502 capacity cannot be readily absorbed in the competitive
503 labor market by an individual receiving such rehabil-
504 itation or remunerative work; or (v) as part of an
505 unemployment work-relief or work-training program
506 assisted or financed in whole or in part by any federal
507 agency or an agency of a state or political subdivision
508 thereof, by an individual receiving such work relief or
509 work training; or (vi) prior to January one, one thousand
510 nine hundred seventy-eight, for a hospital in a state
511 prison or other state correctional institution by an
512 inmate of the prison or correctional institution, and after
513 December thirty-one, one thousand nine hundred

514 seventy-seven, by an inmate of a custodial or penal
515 institution;

516 (12) Service performed in the employ of a school,
517 college or university, if such service is performed (i) by
518 a student who is enrolled and is regularly attending
519 classes at such school, college or university, or (ii) by the
520 spouse of such a student, if such spouse is advised, at
521 the time such spouse commences to perform such
522 service, that (I) the employment of such spouse to
523 perform such service is provided under a program to
524 provide financial assistance to such student by such
525 school, college or university, and (II) such employment
526 will not be covered by any program of unemployment
527 insurance;

528 (13) Service performed by an individual who is
529 enrolled at a nonprofit or public educational institution
530 which normally maintains a regular faculty and
531 curriculum and normally has a regularly organized
532 body of students in attendance at the place where its
533 educational activities are carried on as a student in a
534 full-time program, taken for credit at such institution,
535 which combines academic instruction with work expe-
536 rience, if such service is an integral part of such
537 program, and such institution has so certified to the
538 employer, except that this subdivision shall not apply to
539 service performed in a program established for or on
540 behalf of an employer or group of employers;

541 (14) Service performed in the employ of a hospital, if
542 such service is performed by a patient of the hospital,
543 as defined in this section;

544 (15) Service in the employ of a governmental entity
545 referred to in subdivision (9) of the definition of
546 "employment" in this section if such service is per-
547 formed by an individual in the exercise of duties (i) as
548 an elected official; (ii) as a member of a legislative body,
549 or a member of the judiciary, of a state or political
550 subdivision; (iii) as a member of the state national guard
551 or air national guard; (iv) as an employee serving on a
552 temporary basis in case of fire, storm, snow, earthquake,
553 flood or similar emergency; (v) in a position which,

554 under or pursuant to the laws of this state, is designated
555 as (I) a major nontenured policy-making or advisory
556 position, or (II) a policy-making or advisory position the
557 performance of the duties of which ordinarily does not
558 require more than eight hours per week.

559 Notwithstanding the foregoing exclusions from the
560 definition of "employment," services, except agricultural
561 labor and domestic service in a private home, shall be
562 deemed to be in employment if with respect to such
563 services a tax is required to be paid under any federal
564 law imposing a tax against which credit may be taken
565 for contributions required to be paid into a state
566 unemployment compensation fund, or which as a
567 condition for full tax credit against the tax imposed by
568 the Federal Unemployment Tax Act are required to be
569 covered under this chapter.

570 "Employment office" means a free employment office
571 or branch thereof, operated by this state, or any free
572 public employment office maintained as a part of a state
573 controlled system of public employment offices in any
574 other state.

575 "Fund" means the unemployment compensation fund
576 established by this chapter.

577 "Hospital" means an institution which has been
578 licensed, certified or approved by the state department
579 of health as a hospital.

580 "Institution of higher education" means an educational
581 institution which:

582 (1) Admits as regular students only individuals
583 having a certificate of graduation from a high school,
584 or the recognized equivalent of such a certificate;

585 (2) Is legally authorized in this state to provide a
586 program of education beyond high school;

587 (3) Provides an educational program for which it
588 awards a bachelor's or higher degree, or provides a
589 program which is acceptable for full credit toward such
590 a degree, or provides a program of post-graduate or
591 post-doctoral studies, or provides a program of training

592 to prepare students for gainful employment in a
593 recognized occupation; and

594 (4) Is a public or other nonprofit institution.

595 Notwithstanding any of the foregoing provisions of
596 this definition all colleges and universities in this state
597 are institutions of higher education for purposes of this
598 section.

599 "Payments" means the money required to be paid or
600 that may be voluntarily paid into the state unemploy-
601 ment compensation fund as provided in article five of
602 this chapter.

603 "Separated from employment" means, for the pur-
604 poses of this chapter, the total severance, whether by
605 quitting, discharge or otherwise, of the employer-
606 employee relationship.

607 "State" includes, in addition to the states of the United
608 States, Puerto Rico, District of Columbia and the Virgin
609 Islands.

610 "Total and partial unemployment" means:

611 (1) An individual shall be deemed totally unemployed
612 in any week in which such individual is separated from
613 employment for an employing unit and during which he
614 performs no services and with respect to which no wages
615 are payable to him.

616 (2) An individual who has not been separated from
617 employment shall be deemed to be partially unemployed
618 in any week in which due to lack of full-time work
619 wages payable to him are less than his weekly benefit
620 amount plus twenty-five dollars: *Provided*, That said
621 individual must have earnings of at least twenty-six
622 dollars.

623 "Wages" means all remuneration for personal service,
624 including commissions and bonuses, and the cash value
625 of all remuneration in any medium other than cash
626 except for agricultural labor and domestic service:
627 *Provided*, That the term "wages" shall not include:

628 (1) That part of the remuneration which, after

629 remuneration equal to three thousand dollars has been
630 paid to an individual by an employer with respect to
631 employment during any calendar year, is paid after
632 December thirty-one, one thousand nine hundred thirty-
633 nine, and prior to January one, one thousand nine
634 hundred forty-seven, to such individual by such em-
635 ployer with respect to employment during such calendar
636 year; or that part of the remuneration which, after
637 remuneration equal to three thousand dollars with
638 respect to employment after one thousand nine hundred
639 thirty-eight, has been paid to an individual by an
640 employer during any calendar year after one thousand
641 nine hundred forty-six, is paid to such individual by
642 such employer during such calendar year, except that
643 for the purposes of sections one, ten, eleven and thirteen,
644 article six of this chapter, all remuneration earned by
645 an individual in employment shall be credited to the
646 individual and included in his computation of base
647 period wages: *Provided*, That notwithstanding the
648 foregoing provisions, on and after January one, one
649 thousand nine hundred sixty-two, the term "wages" shall
650 not include:

651 That part of the remuneration which, after remuner-
652 ation equal to three thousand six hundred dollars has
653 been paid to an individual by an employer with respect
654 to employment during any calendar year, is paid during
655 any calendar year after one thousand nine hundred
656 sixty-one; and shall not include that part of remunera-
657 tion which, after remuneration equal to four thousand
658 two hundred dollars is paid during a calendar year after
659 one thousand nine hundred seventy-one; and shall not
660 include that part of remuneration which, after remun-
661 eration equal to six thousand dollars is paid during a
662 calendar year after one thousand nine hundred seventy-
663 seven; and shall not include that part of remuneration
664 which, after remuneration equal to eight thousand
665 dollars is paid during a calendar year after one
666 thousand nine hundred eighty, to an individual by an
667 employer or his predecessor with respect to employment
668 during any calendar year, is paid to such individual by
669 such employer during such calendar year unless that
670 part of the remuneration is subject to a tax under a

671 federal law imposing a tax against which credit may be
672 taken for contributions required to be paid into a state
673 unemployment fund. For the purposes of this subdivi-
674 sion (1), the term "employment" shall include service
675 constituting employment under any unemployment
676 compensation law of another state; or which as a
677 condition for full tax credit against the tax imposed by
678 the Federal Unemployment Tax Act is required to be
679 covered under this chapter; and, except, that for the
680 purposes of sections one, ten, eleven and thirteen, article
681 six of this chapter, all remuneration earned by an
682 individual in employment shall be credited to the
683 individual and included in his computation of base
684 period wages: *Provided*, That the remuneration paid to
685 an individual by an employer with respect to employ-
686 ment in another state or other states upon which
687 contributions were required of and paid by such
688 employer under an unemployment compensation law of
689 such other state or states shall be included as a part of
690 the remuneration equal to the amounts of three thou-
691 sand six hundred dollars or four thousand two hundred
692 dollars or six thousand dollars or eight thousand dollars
693 herein referred to. In applying such limitation on the
694 amount of remuneration that is taxable, an employer
695 shall be accorded the benefit of all or any portion of such
696 amount which may have been paid by its predecessor
697 or predecessors: *Provided, however*, That if the definition
698 of the term "wages" as contained in section 3306(b) of
699 the Internal Revenue Code of 1954 as amended: (a)
700 Effective prior to January one, one thousand nine
701 hundred sixty-two, to include remuneration in excess of
702 three thousand dollars, or (b) effective on or after
703 January one, one thousand nine hundred sixty-two, to
704 include remuneration in excess of three thousand six
705 hundred dollars, or (c) effective on or after January one,
706 one thousand nine hundred seventy-two, to include
707 remuneration in excess of four thousand two hundred
708 dollars, or (d) effective on or after January one, one
709 thousand nine hundred seventy-eight, to include remun-
710 eration in excess of six thousand dollars, or (e) effective
711 on or after January one, one thousand nine hundred
712 eighty, to include remuneration in excess of eight

713 thousand dollars, paid to an individual by an employer
714 under the Federal Unemployment Tax Act during any
715 calendar year, wages for the purposes of this definition
716 shall include remuneration paid in a calendar year to
717 an individual by an employer subject to this article or
718 his predecessor with respect to employment during any
719 calendar year up to an amount equal to the amount of
720 remuneration taxable under the Federal Unemployment
721 Tax Act;

722 (2) The amount of any payment made after December
723 thirty-one, one thousand nine hundred fifty-two (includ-
724 ing any amount paid by an employer for insurance or
725 annuities, or into a fund, to provide for any such
726 payment), to, or on behalf of, an individual in its employ
727 or any of his dependents, under a plan or system
728 established by an employer which makes provision for
729 individuals in its employ generally (or for such individ-
730 uals and their dependents), or for a class or classes of
731 such individuals (or for a class or classes of such
732 individuals and their dependents), on account of (A)
733 retirement, or (B) sickness or accident disability, or (C)
734 medical or hospitalization expenses in connection with
735 sickness or accident disability, or (D) death;

736 (3) Any payment made after December thirty-one, one
737 thousand nine hundred fifty-two, by an employer to an
738 individual in its employ (including any amount paid by
739 an employer for insurance or annuities, or into a fund,
740 to provide for any such payment) on account of
741 retirement;

742 (4) Any payment made after December thirty-one, one
743 thousand nine hundred fifty-two, by an employer on
744 account of sickness or accident disability, or medical or
745 hospitalization expenses in connection with sickness or
746 accident disability, to, or on behalf of, an individual in
747 its employ after the expiration of six calendar months
748 following the last calendar month in which such
749 individual worked for such employer;

750 (5) Any payment made after December thirty-one, one
751 thousand nine hundred fifty-two, by an employer to, or
752 on behalf of, an individual in its employ or his benefi-

753 ciary (A) from or to a trust described in section 401(a)
754 which is exempt from tax under section 501(a) of the
755 Federal Internal Revenue Code at the time of such
756 payments unless such payment is made to such individ-
757 ual as an employee of the trust as remuneration for
758 services rendered by such individual and not as a
759 beneficiary of the trust, or (B) under or to an annuity
760 plan which, at the time of such payment, is a plan
761 described in section 403(a) of the Federal Internal
762 Revenue Code;

763 (6) The payment by an employer of the tax imposed
764 upon an employer under section 3101 of the Federal
765 Internal Revenue Code with respect to remuneration
766 paid to an employee for domestic service in a private
767 home of the employer or agricultural labor;

768 (7) Remuneration paid by an employer after De-
769 cember thirty-one, one thousand nine hundred fifty-two,
770 in any medium other than cash to an individual in its
771 employ for service not in the course of the employer's
772 trade or business;

773 (8) Any payment (other than vacation or sick pay)
774 made by an employer after December thirty-one, one
775 thousand nine hundred fifty-two, to an individual in its
776 employ after the month in which he attains the age of
777 sixty-five, if he did not work for the employer in the
778 period for which such payment is made;

779 (9) Payments, not required under any contract of hire,
780 made to an individual with respect to his period of
781 training or service in the armed forces of the United
782 States by an employer by which such individual was
783 formerly employed;

784 (10) Vacation pay, severance pay or savings plans
785 received by an individual before or after becoming
786 totally or partially unemployed but earned prior to
787 becoming totally or partially unemployed: *Provided,*
788 That the term totally or partially unemployed shall not
789 be interpreted to include (1) employees who are on
790 vacation by reason of the request of the employees or
791 their duly authorized agent, for a vacation at a specific
792 time, and which request by the employees or their agent

793 is acceded to by their employer, (2) employees who are
794 on vacation by reason of the employer's request provided
795 they are so informed at least ninety days prior to such
796 vacation, or (3) employees who are on vacation by reason
797 of the employer's request where such vacation is in
798 addition to the regular vacation and the employer
799 compensates such employee at a rate equal to or
800 exceeding their regular daily rate of pay during the
801 vacation period.

802 Gratuities customarily received by an individual in
803 the course of his employment from persons other than
804 his employing unit shall be treated as wages paid by his
805 employing unit, if accounted for and reported to such
806 employing unit.

807 The reasonable cash value of remuneration in any
808 medium other than cash shall be estimated and deter-
809 mined in accordance with rules prescribed by the
810 commissioner, except for remuneration other than cash
811 for services performed in agricultural labor and
812 domestic service.

813 "Week" means a calendar week, ending at midnight
814 Saturday, or the equivalent thereof, as determined in
815 accordance with the regulations prescribed by the
816 commissioner.

817 "Weekly benefit rate" means the maximum amount of
818 benefit an eligible individual will receive for one week
819 of total unemployment.

820 "Year" means a calendar year or the equivalent
821 thereof, as determined by the commissioner.

CHAPTER 144

(H. B. 2727—By Mr. Speaker, Mr. Chambers, and Delegate Swann,
by request of the Executive)

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

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

thousand nine hundred thirty-one, as amended; to amend and reenact sections ten-b and seventeen, article five; sections one and fifteen, article six; and section eleven, article seven of said chapter, all relating to unemployment compensation.

Be it enacted by the Legislature of West Virginia:

That section three, article one, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections ten-b and seventeen, article five of said chapter be amended and reenacted; that sections one and fifteen, article six; and section eleven, article seven of said chapter be amended and reenacted, all to read as follows:

Article

1. Department of Employment Security.
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
7. Claim Procedure.

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.

***§21A-1-3. Definitions.**

1 As used in this chapter, unless the context clearly
2 requires otherwise:

3 "Administration fund" means the employment secur-
4 ity administration fund, from which the administrative
5 expenses under this chapter shall be paid.

6 "Annual payroll" means the total amount of wages for
7 employment paid by an employer during a twelve-
8 month period ending with June thirty of any calendar
9 year.

10 "Average annual payroll" means the average of the
11 last three annual payrolls of an employer.

12 "Base period" means the first four out of the last five
13 completed calendar quarters immediately preceding the
14 first day of the individual benefit year.

* Clerk's Note: This section was also amended by H. B. 2460, which passed prior to this act.

15 “Base period employer” means any employer who in
16 the base period for any benefit year paid wages to an
17 individual who filed claim for unemployment compen-
18 sation within such benefit year.

19 “Base period wages” means wages paid to an individ-
20 ual during the base period by all his base period
21 employers.

22 “Benefit year” with respect to an individual means the
23 fifty-two-week period beginning with the first day of the
24 calendar week in which a valid claim is effective, and
25 thereafter the fifty-two-week period beginning with the
26 first day of the calendar week in which such individual
27 next files a valid claim for benefits after the termination
28 of his last preceding benefit year; however, if a claim
29 is effective on the first day of a quarter, the benefit year
30 will be fifty-three weeks, in order to prevent an
31 overlapping of the base period wages. An initial claim
32 for benefits filed in accordance with the provisions of
33 this chapter shall be deemed to be a valid claim within
34 the purposes of this definition if the individual has been
35 paid wages in his base period sufficient to make him
36 eligible for benefits under the provisions of this chapter.

37 “Benefits” means the money payable to an individual
38 with respect to his unemployment.

39 “Board” means board of review.

40 “Calendar quarter” means the period of three consec-
41 utive calendar months ending on March thirty-one, June
42 thirty, September thirty or December thirty-one, or the
43 equivalent thereof as the commissioner may by regula-
44 tion prescribe.

45 “Commissioner” means the employment security
46 commissioner.

47 “Computation date” means June thirty of the year
48 immediately preceding the January one on which an
49 employer’s contribution rate becomes effective.

50 “Employing unit” means an individual, or type of
51 organization, including any partnership, association,
52 trust estate, joint-stock company, insurance company,

53 corporation (domestic or foreign), state or political
54 subdivision thereof, or their instrumentalities, as
55 provided in paragraph (b), subdivision (9) of the
56 definition of "employment" in this section, institution of
57 higher education, or the receiver, trustee in bankruptcy,
58 trustee or successor thereof, or the legal representative
59 of a deceased person, which has on January first, one
60 thousand nine hundred thirty-five, or subsequent
61 thereto, had in its employ one or more individuals
62 performing service within this state.

63 "Employer" means:

64 (1) Until January one, one thousand nine hundred
65 seventy-two, any employing unit which for some portion
66 of a day, not necessarily simultaneously, in each of
67 twenty different calendar weeks, which weeks need not
68 be consecutive, within either the current calendar year,
69 or the preceding calendar year, has had in employment
70 four or more individuals irrespective of whether the
71 same individuals were or were not employed on each of
72 such days;

73 (2) Any employing unit which is or becomes a liable
74 employer under any federal unemployment tax act;

75 (3) Any employing unit which has acquired or ac-
76 quires the organization, trade or business, or substan-
77 tially all the assets thereof, of an employing unit which
78 at the time of such acquisition was an employer subject
79 to this chapter;

80 (4) Any employing unit which, after December thirty-
81 one, one thousand nine hundred sixty-three, and until
82 January one, one thousand nine hundred seventy-two, in
83 any one calendar quarter, in any calendar year, has in
84 employment four or more individuals and has paid
85 wages for employment in the total sum of five thousand
86 dollars or more, or which, after such date, has paid

87 wages for employment in any calendar year in the sum
88 total of twenty thousand dollars or more;

89 (5) Any employing unit which, after December thirty-
90 one, one thousand nine hundred sixty-three, and until
91 January one, one thousand nine hundred seventy-two, in
92 any three-week period, in any calendar year, has in
93 employment ten or more individuals;

94 (6) For the effective period of its election pursuant to
95 section three, article five of this chapter, any employing
96 unit which has elected to become subject to this chapter;

97 (7) Any employing unit which, after December thirty-
98 one, one thousand nine hundred seventy-one, (i) in any
99 calendar quarter in either the current or preceding
100 calendar year paid for service in employment wages of
101 one thousand five hundred dollars or more, or (ii) for
102 some portion of a day in each of twenty different
103 calendar weeks, whether or not such weeks were
104 consecutive, in either the current or the preceding
105 calendar year had in employment at least one individual
106 (irrespective of whether the same individual was in
107 employment in each such day) except as provided in
108 subdivisions eleven and twelve hereof;

109 (8) Any employing unit for which service in employ-
110 ment, as defined in subdivision (9) of the definition of
111 "employment" in this section, is performed after
112 December thirty-one, one thousand nine hundred
113 seventy-one;

114 (9) Any employing unit for which service in employ-
115 ment, as defined in subdivision (10) of the definition of
116 "employment" in this section, is performed after
117 December thirty-one, one thousand nine hundred
118 seventy-one;

119 (10) Any employing unit for which service in employ-
120 ment, as defined in paragraphs (b) and (c) of subdivision
121 (9) of the definition of "employment" in this section, is
122 performed after December thirty-one, one thousand nine
123 hundred seventy-seven;

125 (11) Any employing unit for which agricultural labor,
126 as defined in subdivision (12) of the definition of
127 "employment" in this section, is performed after
128 December thirty-one, one thousand nine hundred
129 seventy-seven;

130 (12) Any employing unit for which domestic service
131 in employment, as defined in subdivision (13) of the
132 definition of "employment" in this section, is performed
133 after December thirty-one, one thousand nine hundred
134 seventy-seven.

135 "Employment," subject to the other provisions of this
136 section, means:

137 (1) Service, including service in interstate commerce,
138 performed for wages or under any contract of hire,
139 written or oral, express or implied;

140 (2) Any service performed prior to January one, one
141 thousand nine hundred seventy-two, which was employ-
142 ment as defined in this section prior to such date and,
143 subject to the other provisions of this section, service
144 performed after December thirty-one, one thousand nine
145 hundred seventy-one, by an employee, as defined in
146 section 3306(i) of the Federal Unemployment Tax Act,
147 including service in interstate commerce;

148 (3) Any service performed prior to January one, one
149 thousand nine hundred seventy-two, which was employ-
150 ment as defined in this section prior to such date and,
151 subject to the other provisions of this section, service
152 performed after December thirty-one, one thousand nine
153 hundred seventy-one, including service in interstate
154 commerce, by any officer of a corporation;

155 (4) An individual's entire service, performed within or
156 both within and without this state if: (a) The service is
157 localized in this state or (b) the service is not localized
158 in any state but some of the service is performed in this
159 state and (i) the base of operations, or, if there is no base
160 of operations, then the place from which such service is
161 directed or controlled, is in this state; or (ii) the base of
162 operations or place from which such service is directed
163 or controlled is not in any state in which some part of

164 the service is performed but the individual's residence
165 is in this state;

166 (5) Service not covered under paragraph four of this
167 subdivision and performed entirely without this state
168 with respect to no part of which contributions are
169 required and paid under an unemployment compensa-
170 tion law of any other state or of the federal government,
171 shall be deemed to be employment subject to this
172 chapter if the individual performing such services is a
173 resident of this state and the commissioner approves the
174 election of the employing unit for whom such services
175 are performed that the entire service of such individual
176 shall be deemed to be employment subject to this
177 chapter;

178 (6) Service shall be deemed to be localized within a
179 state, if: (a) The service is performed entirely within
180 such state; or (b) the service is performed both within
181 and without such state, but the service performed
182 without such state is incidental to the individual's
183 service within this state, as, for example, is temporary
184 or transitory in nature or consists of isolated
185 transactions;

186 (7) Services performed by an individual for wages
187 shall be deemed to be employment subject to this
188 chapter unless and until it is shown to the satisfaction
189 of the commissioner that: (a) Such individual has been
190 and will continue to be free from control or direction
191 over the performance of such services, both under his
192 contract of service and in fact; and (b) such service is
193 either outside the usual course of the business for which
194 such service is performed or that such service is
195 performed outside of all the places of business of the
196 enterprise for which such service is performed; and (c)
197 such individual is customarily engaged in an independ-
198 ently established trade, occupation, profession or
199 business;

200 (8) All service performed by an officer or member of
201 the crew of an American vessel (as defined in section
202 three hundred five of an act of Congress entitled Social
203 Security Act Amendment of 1946, approved August

204 tenth, one thousand nine hundred forty-six), on or in
205 connection with such vessel, provided that the operating
206 office, from which the operations of such vessel operat-
207 ing on navigable waters within and without the United
208 States is ordinarily and regularly supervised, managed,
209 directed and controlled, is within this state;

210 (9) (a) Service performed after December thirty-one,
211 one thousand nine hundred seventy-one, by an individual
212 in the employ of this state or any of its instrumentalities
213 (or in the employ of this state and one or more other
214 states or their instrumentalities) for a hospital or
215 institution of higher education located in this state:
216 *Provided*, That such service is excluded from "employ-
217 ment" as defined in the Federal Unemployment Tax Act
218 solely by reason of section 3306 (c) (7) of that act and
219 is not excluded from "employment" under subdivision
220 (11) of the exclusion from employment.

221 (b) Service performed after December thirty-one, one
222 thousand nine hundred seventy-seven, in the employ of
223 this state or any of its instrumentalities or political
224 subdivisions thereof or any of its instrumentalities or
225 any instrumentality of more than one of the foregoing
226 or any instrumentality of any foregoing and one or more
227 other states or political subdivisions: *Provided*, That
228 such service is excluded from "employment" as defined
229 in the Federal Unemployment Tax Act by section 3306
230 (c) (7) of that act and is not excluded from "employment"
231 under subdivision (15) of the exclusion from employment
232 in this section; and

233 (c) Service performed after December thirty-one, one
234 thousand nine hundred seventy-seven, in the employ of
235 a nonprofit educational institution which is not an
236 institution of higher education;

237 (10) Service performed after December thirty-one,
238 one thousand nine hundred seventy-one, by an individual
239 in the employ of a religious, charitable, educational or
240 other organization but only if the following conditions
241 are met:

242 (a) The service is excluded from "employment" as
243 defined in the Federal Unemployment Tax Act solely by

244 reason of section 3306(c) (8) of that act; and

245 (b) The organization had four or more individuals in
246 employment for some portion of a day in each of twenty
247 different weeks, whether or not such weeks were
248 consecutive, within either the current or preceding
249 calendar year, regardless of whether they were em-
250 ployed at the same moment of time;

251 (11) Service of an individual who is a citizen of the
252 United States, performed outside the United States
253 after December thirty-one, one thousand nine hundred
254 seventy-one (except in Canada and in the case of Virgin
255 Islands after December thirty-one, one thousand nine
256 hundred seventy-one, and before January one of the year
257 following the year in which the secretary of labor
258 approves for the first time an unemployment insurance
259 law submitted to him by the Virgin Islands for appro-
260 val) in the employ of an American employer (other than
261 service which is deemed "employment" under the
262 provisions of subdivision (4), (5) or (6) of this definition
263 of "employment" or the parallel provisions of another
264 state's law) if:

265 (a) The employer's principal place of business in the
266 United States is located in this state; or

267 (b) The employer has no place of business in the
268 United States, but (i) the employer is an individual who
269 is a resident of this state; or (ii) the employer is a
270 corporation which is organized under the laws of this
271 state; or (iii) the employer is a partnership or a trust
272 and the number of the partners or trustees who are
273 residents of this state is greater than the number who
274 are residents of any one other state; or

275 (c) None of the criteria of subparagraphs (a) and (b)
276 of this subdivision (11) is met but the employer has
277 elected coverage in this state or, the employer having
278 failed to elect coverage in any state, the individual has
279 filed a claim for benefits, based on such service, under
280 the law of this state.

281 An "American employer," for purposes of this subdi-
282 vision (11), means a person who is (i) an individual who

283 is a resident of the United States; or (ii) a partnership
284 if two thirds or more of the partners are residents of
285 the United States; or (iii) a trust, if all of the trustees
286 are residents of the United States; or (iv) a corporation
287 organized under the laws of the United States or of any
288 state;

289 (12) Service performed after December thirty-one,
290 one thousand nine hundred seventy-seven, by an individ-
291 ual in agricultural labor as defined in subdivision (5) of
292 the exclusions from employment in this section when:

293 (a) Such service is performed for a person who (i)
294 during any calendar quarter in either the current or the
295 preceding calendar year paid remuneration in cash of
296 twenty thousand dollars or more to individuals em-
297 ployed in agricultural labor, including labor performed
298 by an alien referred to in paragraph (b) of this
299 subdivision (12); or (ii) for some portion of a day in each
300 of twenty different calendar weeks, whether or not such
301 weeks were consecutive, in either the current or the
302 preceding calendar year, employed in agricultural
303 labor, including labor performed by an alien referred
304 to in paragraph (b) of this subdivision (12), ten or more
305 individuals, regardless of whether they were employed
306 at the same moment of time;

307 (b) Such service is not performed in agricultural
308 labor if performed before January one, one thousand
309 nine hundred eighty-eight by an individual who is an
310 alien admitted to the United States to perform service
311 in agricultural labor pursuant to sections 214 (c) and 101
312 (a) (15) (H) of the Immigration and Nationality Act;

313 (c) For the purposes of the definition of employment,
314 any individual who is a member of a crew furnished by
315 a crew leader to perform service in agricultural labor
316 for any other person shall be treated as an employee of
317 such crew leader (i) if such crew leader holds a valid
318 certificate of registration under the Farm Labor
319 Contractor Registration Act of 1963; or substantially all
320 the members of such crew operate or maintain tractors,
321 mechanized harvesting or crop-dusting equipment, or
322 any other mechanized equipment, which is provided by

323 such crew leader; and (ii) if such individual is not an
324 employee of such other person within the meaning of
325 subdivision (7) of the definition of employer;

326 (d) For the purposes of this subdivision (12), in the
327 case of any individual who is furnished by a crew leader
328 to perform service in agricultural labor for any other
329 person and who is not treated as an employee of such
330 crew leader under subparagraph (c) of this subdivision
331 (12), (i) such other person and not the crew leader shall
332 be treated as the employer of such individual; and (ii)
333 such other person shall be treated as having paid cash
334 remuneration to such individual in an amount equal to
335 the amount of cash remuneration paid to such individual
336 by the crew leader (either on his own behalf or on behalf
337 of such other person) for the service in agricultural
338 labor performed for such other person;

339 (e) For the purposes of this subdivision (12), the term
340 "crew leader" means an individual who (i) furnishes
341 individuals to perform service in agricultural labor for
342 any other person, (ii) pays (either on his own behalf or
343 on behalf of such other person) the individuals so
344 furnished by him for the service in agricultural labor
345 performed by them, and (iii) has not entered into a
346 written agreement with such other person under which
347 such individual is designated as an employee of such
348 other person;

349 (13) The term "employment" shall include domestic
350 service after December thirty-one, one thousand nine
351 hundred seventy-seven, in a private home, local college
352 club or local chapter of a college fraternity or sorority
353 performed for a person who paid cash remuneration of
354 one thousand dollars or more after December thirty-one,
355 one thousand nine hundred seventy-seven, in any
356 calendar quarter in the current calendar year or the
357 preceding calendar year to individuals employed in such
358 domestic service.

359 Notwithstanding the foregoing definition of "employ-
360 ment," if the services performed during one half or more
361 of any pay period by an employee for the person
362 employing him constitute employment, all the services

363 of such employee for such period shall be deemed to be
364 employment; but if the services performed during more
365 than one half of any such pay period by an employee for
366 the person employing him do not constitute employment,
367 then none of the services of such employee for such
368 period shall be deemed to be employment.

369 The term "employment" shall not include:

370 (1) Service performed in the employ of this state or
371 any political subdivision thereof, or any instrumentality
372 of this state or its subdivisions, except as otherwise
373 provided herein until December thirty-one, one thou-
374 sand nine hundred seventy-seven;

375 (2) Service performed directly in the employ of
376 another state, or its political subdivisions, except as
377 otherwise provided in paragraph (a), subdivision (9) of
378 the definition of "employment," until December thirty-
379 one, one thousand nine hundred seventy-seven;

380 (3) Service performed in the employ of the United
381 States or any instrumentality of the United States
382 exempt under the constitution of the United States from
383 the payments imposed by this law, except that to the
384 extent that the Congress of the United States shall
385 permit states to require any instrumentalities of the
386 United States to make payments into an unemployment
387 fund under a state unemployment compensation law, all
388 of the provisions of this law shall be applicable to such
389 instrumentalities and to service performed for such
390 instrumentalities in the same manner, to the same
391 extent and on the same terms as to all other employers,
392 employing units, individuals and services: *Provided,*
393 That if this state shall not be certified for any year by
394 the secretary of labor under section 1603(c) of the
395 federal Internal Revenue Code, the payments required
396 of such instrumentalities with respect to such year shall
397 be refunded by the commissioner from the fund in the
398 same manner and within the same period as is provided
399 in section nineteen, article five of this chapter, with
400 respect to payments erroneously collected;

401 (4) Service performed after June thirty, one thousand
402 nine hundred thirty-nine, with respect to which unem-

402 ployment compensation is payable under the Railroad
403 Unemployment Insurance Act and service with respect
404 to which unemployment benefits are payable under an
405 unemployment compensation system for maritime
406 employees established by an act of Congress. The
407 commissioner may enter into agreements with the
408 proper agency established under such an act of Congress
409 to provide reciprocal treatment to individuals who, after
410 acquiring potential rights to unemployment compensa-
411 tion under an act of Congress, or who have, after
412 acquiring potential rights to unemployment compensa-
413 tion under an act of Congress, acquired rights to benefit
414 under this chapter. Such agreement shall become
415 effective ten days after such publications which shall
416 comply with the general rules of the department;

417 (5) Service performed by an individual in agricultural
418 labor, except as provided in subdivision (12) of the
419 definition of "employment" in this section. For purposes
420 of this subdivision (5), the term "agricultural labor"
421 includes all services performed:

422 (a) On a farm, in the employ of any person, in
423 connection with cultivating the soil, or in connection
424 with raising or harvesting any agricultural or horticul-
425 tural commodity, including the raising, shearing,
426 feeding, caring for, training and management of
427 livestock, bees, poultry, and fur-bearing animals and
428 wildlife;

429 (b) In the employ of the owner or tenant or other
430 operator of a farm, in connection with the operation,
431 management, conservation, improvement or mainte-
432 nance of such farm and its tools and equipment, or in
433 salvaging timber or clearing land of brush and other
434 debris left by a hurricane, if the major part of such
435 service is performed on a farm;

436 (c) In connection with the production or harvesting of
437 any commodity defined as an agricultural commodity in
438 section fifteen (g) of the Agricultural Marketing Act, as
439 amended, or in connection with the ginning of cotton,
440 or in connection with the operation or maintenance of
441 ditches, canals, reservoirs or waterways, not owned or

442 operated for profit, used exclusively for supplying and
443 storing water for farming purposes;

444 (d) (i) In the employ of the operator of a farm in
445 handling, planting, drying, packing, packaging, process-
446 ing, freezing, grading, storing or delivering to storage
447 or to market or to a carrier for transportation to market,
448 in its unmanufactured state, any agricultural or
449 horticultural commodity; but only if such operator
450 produced more than one half of the commodity with
451 respect to which such service is performed; or (ii) in the
452 employ of a group of operators of farms (or a cooperative
453 organization of which such operators are members) in
454 the performance of service described in clause (i), but
455 only if such operators produced more than one half of
456 the commodity with respect to which such service is
457 performed; but the provisions of clauses (i) and (ii) shall
458 not be deemed to be applicable with respect to service
459 performed in connection with commercial canning or
460 commercial freezing or in connection with any agricul-
461 tural or horticultural commodity after its delivery to a
462 terminal market for distribution for consumption;

463 (e) On a farm operated for profit if such service is not
464 in the course of the employer's trade or business or is
465 domestic service in a private home of the employer. As
466 used in this subdivision (5), the term "farm" includes
467 stock, dairy, poultry, fruit, fur-bearing animals, truck
468 farms, plantations, ranches, greenhouses, ranges and
469 nurseries, or other similar land areas or structures used
470 primarily for the raising of any agricultural or horti-
471 cultural commodities;

472 (6) Domestic service in a private home except as
473 provided in subdivision (13) of the definition of "employ-
474 ment" in this section;

475 (7) Service performed by an individual in the employ
476 of his son, daughter or spouse;

477 (8) Service performed by a child under the age of
478 eighteen years in the employ of his father or mother;

479 (9) Service as an officer or member of a crew of an
480 American vessel, performed on or in connection with
481 such vessel, if the operating office, from which the
482 operations of the vessel operating on navigable waters
483 within or without the United States are ordinarily and
484 regularly supervised, managed, directed and controlled,
485 is without this state;

486 (10) Service performed by agents of mutual fund
487 broker-dealers or insurance companies, exclusive of
488 industrial insurance agents, or by agents of investment
489 companies, who are compensated wholly on a commis-
490 sion basis;

491 (11) Service performed (i) in the employ of a church
492 or convention or association of churches, or an organi-
493 zation which is operated primarily for religious pur-
494 poses and which is operated, supervised, controlled or
495 principally supported by a church or convention or
496 association of churches; or (ii) by a duly ordained,
497 commissioned or licensed minister of a church in the
498 exercise of his ministry or by a member of a religious
499 order in the exercise of duties required by such order;
500 or (iii) prior to January one, one thousand nine hundred
501 seventy-eight, in the employ of a school which is not an
502 institution of higher education; or (iv) in a facility
503 conducted for the purpose of carrying out a program of
504 rehabilitation for individuals whose earning capacity is
505 impaired by age or physical or mental deficiency or
506 injury or providing remunerative work for individuals
507 who because of their impaired physical or mental
508 capacity cannot be readily absorbed in the competitive
509 labor market by an individual receiving such rehabil-
510 itation or remunerative work; or (v) as part of an
511 unemployment work-relief or work-training program
512 assisted or financed in whole or in part by any federal
513 agency or an agency of a state or political subdivision
514 thereof, by an individual receiving such work relief or
515 work training; or (vi) prior to January one, one thousand

518 nine hundred seventy-eight, for a hospital in a state
519 prison or other state correctional institution by an
520 inmate of the prison or correctional institution, and after
521 December thirty-one, one thousand nine hundred
522 seventy-seven, by an inmate of a custodial or penal
523 institution;

524 (12) Service performed in the employ of a school,
525 college or university, if such service is performed (i) by
526 a student who is enrolled and is regularly attending
527 classes at such school, college or university, or (ii) by the
528 spouse of such a student, if such spouse is advised, at
529 the time such spouse commences to perform such
530 service, that (I) the employment of such spouse to
531 perform such service is provided under a program to
532 provide financial assistance to such student by such
533 school, college or university, and (II) such employment
534 will not be covered by any program of unemployment
535 insurance;

536 (13) Service performed by an individual who is
537 enrolled at a nonprofit or public educational institution
538 which normally maintains a regular faculty and
539 curriculum and normally has a regularly organized
540 body of students in attendance at the place where its
541 educational activities are carried on as a student in a
542 full-time program, taken for credit at such institution,
543 which combines academic instruction with work expe-
544 rience, if such service is an integral part of such
545 program, and such institution has so certified to the
546 employer, except that this subdivision shall not apply to
547 service performed in a program established for or on
548 behalf of an employer or group of employers;

549 (14) Service performed in the employ of a hospital, if
550 such service is performed by a patient of the hospital,
551 as defined in this section;

552 (15) Service in the employ of a governmental entity
553 referred to in subdivision (9) of the definition of
554 "employment" in this section if such service is per-
555 formed by an individual in the exercise of duties (i) as
556 an elected official; (ii) as a member of a legislative body,
557 or a member of the judiciary, of a state or political

558 subdivision; (iii) as a member of the state national guard
559 or air national guard; (iv) as an employee serving on a
560 temporary basis in case of fire, storm, snow, earthquake,
561 flood or similar emergency; (v) in a position which,
562 under or pursuant to the laws of this state, is designated
563 as (I) a major nontenured policy-making or advisory
564 position, or (II) a policy-making or advisory position the
565 performance of the duties of which ordinarily does not
566 require more than eight hours per week.

567 Notwithstanding the foregoing exclusions from the
568 definition of "employment," services, except agricultural
569 labor and domestic service in a private home, shall be
570 deemed to be in employment if with respect to such
571 services a tax is required to be paid under any federal
572 law imposing a tax against which credit may be taken
573 for contributions required to be paid into a state
574 unemployment compensation fund, or which as a
575 condition for full tax credit against the tax imposed by
576 the Federal Unemployment Tax Act are required to be
577 covered under this chapter.

578 "Employment office" means a free employment office
579 or branch thereof, operated by this state, or any free
580 public employment office maintained as a part of a state
581 controlled system of public employment offices in any
582 other state.

583 "Fund" means the unemployment compensation fund
584 established by this chapter.

585 "Hospital" means an institution which has been
586 licensed, certified or approved by the state department
587 of health as a hospital.

588 "Institution of higher education" means an educational
589 institution which:

590 (1) Admits as regular students only individuals
591 having a certificate of graduation from a high school,
592 or the recognized equivalent of such a certificate;

593 (2) Is legally authorized in this state to provide a
594 program of education beyond high school;

595 (3) Provides an educational program for which it

596 awards a bachelor's or higher degree, or provides a
597 program which is acceptable for full credit toward such
598 a degree, or provides a program of post-graduate or
599 post-doctoral studies, or provides a program of training
600 to prepare students for gainful employment in a
601 recognized occupation; and

602 (4) Is a public or other nonprofit institution.

603 Notwithstanding any of the foregoing provisions of
604 this definition all colleges and universities in this state
605 are institutions of higher education for purposes of this
606 section.

607 "Payments" means the money required to be paid or
608 that may be voluntarily paid into the state unemploy-
609 ment compensation fund as provided in article five of
610 this chapter.

611 "Separated from employment" means, for the pur-
612 poses of this chapter, the total severance, whether by
613 quitting, discharge or otherwise, of the employer-
614 employee relationship.

615 "State" includes, in addition to the states of the United
616 States, Puerto Rico, District of Columbia and the Virgin
617 Islands.

618 "Total and partial unemployment" means:

619 (1) An individual shall be deemed totally unemployed
620 in any week in which such individual is separated from
621 employment for an employing unit and during which he
622 performs no services and with respect to which no wages
623 are payable to him.

624 (2) An individual who has not been separated from
625 employment shall be deemed to be partially unemployed
626 in any week in which due to lack of full-time work
627 wages payable to him are less than his weekly benefit
628 amount plus twenty-five dollars: *Provided*, That said
629 individual must have earnings of at least twenty-six
630 dollars.

631 "Wages" means all remuneration for personal service,
632 including commissions, gratuities customarily received
633 by an individual in the course of employment from

634 persons other than the employing unit, as long as such
635 gratuities equal or exceed an amount of not less than
636 twenty dollars each month and which are required to
637 be reported to the employer by the employee, bonuses
638 and the cash value of all remuneration in any medium
639 other than cash except for agricultural labor and
640 domestic service: *Provided*, That the term "wages" shall
641 not include:

642 (1) That part of the remuneration which, after
643 remuneration equal to three thousand dollars has been
644 paid to an individual by an employer with respect to
645 employment during any calendar year, is paid after
646 December thirty-one, one thousand nine hundred thirty-
647 nine, and prior to January one, one thousand nine
648 hundred forty-seven, to such individual by such em-
649 ployer with respect to employment during such calendar
650 year; or that part of the remuneration which, after
651 remuneration equal to three thousand dollars with
652 respect to employment after one thousand nine hundred
653 thirty-eight, has been paid to an individual by an
654 employer during any calendar year after one thousand
655 nine hundred forty-six, is paid to such individual by
656 such employer during such calendar year, except that
657 for the purposes of sections one, ten, eleven and thirteen,
658 article six of this chapter, all remuneration earned by
659 an individual in employment shall be credited to the
660 individual and included in his computation of base
661 period wages: *Provided*, That notwithstanding the
662 foregoing provisions, on and after January one, one
663 thousand nine hundred sixty-two, the term "wages" shall
664 not include:

665 That part of the remuneration which, after remuner-
666 ation equal to three thousand six hundred dollars has
667 been paid to an individual by an employer with respect
668 to employment during any calendar year, is paid during
669 any calendar year after one thousand nine hundred
670 sixty-one; and shall not include that part of remunera-
671 tion which, after remuneration equal to four thousand
672 two hundred dollars is paid during a calendar year after
673 one thousand nine hundred seventy-one; and shall not
674 include that part of remuneration which, after remun-

675 eration equal to six thousand dollars is paid during a
676 calendar year after one thousand nine hundred seventy-
677 seven; and shall not include that part of remuneration
678 which, after remuneration equal to eight thousand
679 dollars is paid during a calendar year after one
680 thousand nine hundred eighty, to an individual by an
681 employer or his predecessor with respect to employment
682 during any calendar year, is paid to such individual by
683 such employer during such calendar year unless that
684 part of the remuneration is subject to a tax under a
685 federal law imposing a tax against which credit may be
686 taken for contributions required to be paid into a state
687 unemployment fund. For the purposes of this subdivi-
688 sion (1), the term "employment" shall include service
689 constituting employment under any unemployment
690 compensation law of another state; or which as a
691 condition for full tax credit against the tax imposed by
692 the Federal Unemployment Tax Act is required to be
693 covered under this chapter; and, except, that for the
694 purposes of sections one, ten, eleven and thirteen, article
695 six of this chapter, all remuneration earned by an
696 individual in employment shall be credited to the
697 individual and included in his computation of base
698 period wages: *Provided*, That the remuneration paid to
699 an individual by an employer with respect to employ-
700 ment in another state or other states upon which
701 contributions were required of and paid by such
702 employer under an unemployment compensation law of
703 such other state or states shall be included as a part of
704 the remuneration equal to the amounts of three thou-
705 sand six hundred dollars or four thousand two hundred
706 dollars or six thousand dollars or eight thousand dollars
707 herein referred to. In applying such limitation on the
708 amount of remuneration that is taxable, an employer
709 shall be accorded the benefit of all or any portion of such
710 amount which may have been paid by its predecessor
711 or predecessors: *Provided, however*, That if the definition
712 of the term "wages" as contained in section 3306(b) of
713 the Internal Revenue Code of 1954 as amended, is
714 amended: (a) Effective prior to January one, one
715 thousand nine hundred sixty-two, to include remunera-
716 tion in excess of three thousand dollars, or (b) effective

717 on or after January one, one thousand nine hundred
718 sixty-two, to include remuneration in excess of three
719 thousand six hundred dollars, or (c) effective on or after
720 January one, one thousand nine hundred seventy-two, to
721 include remuneration in excess of four thousand two
722 hundred dollars, or (d) effective on or after January one,
723 one thousand nine hundred seventy-eight, to include
724 remuneration in excess of six thousand dollars, or (e)
725 effective on or after January one, one thousand nine
726 hundred eighty, to include remuneration in excess of
727 eight thousand dollars, paid to an individual by an
728 employer under the Federal Unemployment Tax Act
729 during any calendar year, wages for the purposes of this
730 definition shall include remuneration paid in a calendar
731 year to an individual by an employer subject to this
732 article or his predecessor with respect to employment
733 during any calendar year up to an amount equal to the
734 amount of remuneration taxable under the Federal
735 Unemployment Tax Act;

736 (2) The amount of any payment made after December
737 thirty-one, one thousand nine hundred fifty-two (includ-
738 ing any amount paid by an employer for insurance or
739 annuities, or into a fund, to provide for any such
740 payment), to, or on behalf of, an individual in its employ
741 or any of his dependents, under a plan or system
742 established by an employer which makes provision for
743 individuals in its employ generally (or for such individ-
744 uals and their dependents), or for a class or classes of
745 such individuals (or for a class or classes of such
746 individuals and their dependents), on account of (A)
747 retirement, or (B) sickness or accident disability
748 payments made to an employee under an approved state
749 workers' compensation law, or (C) medical or hospital-
750 ization expenses in connection with sickness or accident
751 disability, or (D) death;

752 (3) Any payment made after December thirty-one, one
753 thousand nine hundred fifty-two, by an employer to an
754 individual in its employ (including any amount paid by
755 an employer for insurance or annuities, or into a fund,
756 to provide for any such payment) on account of
757 retirement;

758 (4) Any payment made after December thirty-one, one
759 thousand nine hundred fifty-two, by an employer on
760 account of sickness or accident disability, or medical or
761 hospitalization expenses in connection with sickness or
762 accident disability, to, or on behalf of, an individual in
763 its employ after the expiration of six calendar months
764 following the last calendar month in which such
765 individual worked for such employer;

766 (5) Any payment made after December thirty-one, one
767 thousand nine hundred fifty-two, by an employer to, or
768 on behalf of, an individual in its employ or his benefi-
769 ciary (A) from or to a trust described in section 401(a)
770 which is exempt from tax under section 501(a) of the
771 Federal Internal Revenue Code at the time of such
772 payments unless such payment is made to such individ-
773 ual as an employee of the trust as remuneration for
774 services rendered by such individual and not as a
775 beneficiary of the trust, or (B) under or to an annuity
776 plan which, at the time of such payment, is a plan
777 described in section 403(a) of the Federal Internal
778 Revenue Code;

779 (6) The payment by an employer of the tax imposed
780 upon an employer under section 3101 of the Federal
781 Internal Revenue Code with respect to remuneration
782 paid to an employee for domestic service in a private
783 home of the employer or agricultural labor;

784 (7) Remuneration paid by an employer after De-
785 cember thirty-one, one thousand nine hundred fifty-two,
786 in any medium other than cash to an individual in its
787 employ for service not in the course of the employer's
788 trade or business;

789 (8) Any payment (other than vacation or sick pay)
790 made by an employer after December thirty-one, one
791 thousand nine hundred fifty-two, to an individual in its
792 employ after the month in which he attains the age of
793 sixty-five, if he did not work for the employer in the
794 period for which such payment is made;

795 (9) Payments, not required under any contract of hire,
796 made to an individual with respect to his period of
797 training or service in the armed forces of the United
798 States by an employer by which such individual was
799 formerly employed;

800 (10) Vacation pay, severance pay or savings plans
801 received by an individual before or after becoming
802 totally or partially unemployed but earned prior to
803 becoming totally or partially unemployed: *Provided,*
804 That the term totally or partially unemployed shall not
805 be interpreted to include (1) employees who are on
806 vacation by reason of the request of the employees or
807 their duly authorized agent, for a vacation at a specific
808 time, and which request by the employees or their agent
809 is acceded to by their employer, (2) employees who are
810 on vacation by reason of the employer's request provided
811 they are so informed at least ninety days prior to such
812 vacation, or (3) employees who are on vacation by reason
813 of the employer's request where such vacation is in
814 addition to the regular vacation and the employer
815 compensates such employee at a rate equal to or
816 exceeding their regular daily rate of pay during the
817 vacation period.

818 Gratuities customarily received by an individual in
819 the course of his employment from persons other than
820 his employing unit shall be treated as wages paid by his
821 employing unit, if accounted for and reported to such
822 employing unit.

823 The reasonable cash value of remuneration in any
824 medium other than cash shall be estimated and deter-
825 mined in accordance with rules prescribed by the
826 commissioner, except for remuneration other than cash
827 for services performed in agricultural labor and
828 domestic service.

829 "Week" means a calendar week, ending at midnight
830 Saturday, or the equivalent thereof, as determined in
831 accordance with the regulations prescribed by the
832 commissioner.

833 "Weekly benefit rate" means the maximum amount of
834 benefit an eligible individual will receive for one week
835 of total unemployment.

836 "Year" means a calendar year or the equivalent
837 thereof, as determined by the commissioner.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-10b. Transfer of business.

§21A-5-17. Interest on past-due payments.

§21A-5-10b. Transfer of business.

1 If a subject employer shall transfer his entire
2 organization, trade or business, or substantially all the
3 assets thereof, to another employer, the commissioner
4 shall combine the contribution records and the benefit
5 experience records of the transferring and acquiring
6 employers. The acquiring employer's contribution rate
7 for the remainder of the calendar year shall not be
8 affected by the transfer but such rate shall apply to the
9 whole of his business, including the portion acquired by
10 the transfer, through the following December thirty-
11 first. If a subject employer shall make such transfer to
12 an employing unit which is not an employer on the date
13 of the transfer, such subject employer's rate shall
14 continue as the rate of the acquiring employing unit
15 until the next effective rate date. If an employing unit
16 acquires simultaneously the entire organization, trade
17 or business, or substantially all the assets thereof, of two
18 or more covered employers, the successor shall be
19 assigned as a contribution rate the then current rate of
20 the transferring employer which had, in the calendar
21 quarter immediately preceding the date of the transfer,
22 the higher or highest payroll. If a subject employer shall
23 transfer his entire organization, trade or business, or
24 substantially all the assets thereof, to two or more
25 employers or employing units, apportionment of the
26 contribution records and benefit experience records of
27 the transferring employer shall be made between the
28 acquiring units in accordance with the ratio that the
29 total assets acquired by each transferee bears to the
30 total assets transferred by the transferring employer as
31 of the date of the transfers. The current contribution
32 rate of the transferring employer shall in such case
33 continue as the rate of each transferee who or which is
34 an employing unit until the next effective rate date; the
35 current contribution rate of each transferee who or
36 which is an employer shall continue as his or its rate
37 until the next effective rate date. For the succeeding

38 calendar year the rate of each transferee shall be
39 determined as provided in section ten of this article. As
40 to any transfers which occur prior to July thirty-first of
41 the current calendar year such rate shall remain
42 effective for the balance of that calendar year: *Provided,*
43 *however,* That if the transfers occur subsequent to July
44 thirty-first such rate shall remain effective for the
45 balance of that calendar year and the rate for the
46 succeeding calendar year shall, notwithstanding any-
47 thing to the contrary provided in section seven of article
48 five of this chapter, be recomputed on the basis of the
49 combined experience of the transferring employers as of
50 July thirty-first of the year in which the transfers occur.
51 In case the transferring employer is delinquent in the
52 payment of contributions or interest thereon the
53 acquiring employer shall not be entitled to any benefit
54 of the contribution record of the transferring employer
55 unless payment of such delinquent contributions and
56 interest thereon is assumed by the acquiring employer.
57 The commissioner shall upon joint request of the
58 transferor and transferee furnish the transferee a
59 statement of the amount of any contribution and interest
60 due and unpaid by the transferor. A statement so
61 furnished shall be controlling for the purposes of the
62 foregoing proviso.

63 The provisions of this section shall not apply to any
64 employer which is established through the assistance of
65 any state economic development agency irrespective of
66 the contribution rate of any related predecessor.

§21A-5-17. Interest on past-due payments.

1 Payments unpaid on the date on which due and
2 payable, as prescribed by the commissioner, shall bear
3 interest at the rate of one percent per month until
4 payment plus accrued interest is received by the
5 commissioner. The commissioner may waive interest on
6 the payment of delinquent employers if payment is
7 made on all outstanding delinquent contributions which
8 were incurred on or before the first day of January, one
9 thousand nine hundred eighty-seven, during the period
10 beginning the first day of July, one thousand nine

11 hundred eighty-seven and ending on the thirty-first day
12 of December, one thousand nine hundred eighty-seven.

13 Interest collected pursuant to this section shall be paid
14 into the employment security special administration
15 fund.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.

§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, educational institutions and governmental entities.

§21A-6-1. Eligibility qualifications.

1 An unemployed individual shall be eligible to receive
2 benefits only if the commissioner finds that:

3 (1) He has registered for work at and thereafter
4 continues to report at an employment office in accor-
5 dance with the regulations of the commissioner;

6 (2) He has made a claim for benefits in accordance
7 with the provisions of article seven of this chapter and
8 has furnished his social security number, or numbers if
9 he has more than one such number;

10 (3) He is able to work and is available for full-time
11 work for which he is fitted by prior training or
12 experience and is doing that which a reasonably prudent
13 person in his circumstances would do in seeking work;

14 (4) He has been totally or partially unemployed
15 during his benefit year for a waiting period of one week
16 prior to the week for which he claims benefits for total
17 or partial unemployment; and

18 (5) He has within his base period been paid wages for
19 employment equal to not less than two thousand two
20 hundred dollars and must have earned wages in more
21 than one quarter of his base period.

§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, educational institutions and governmental entities.

1 (1) Benefits based on service in employment as
2 defined in subdivisions (9) and (10) of the definition of

3 "employment" in section three, article one of this
4 chapter, shall be payable in the same amount, on the
5 same terms and subject to the same conditions as
6 compensation payable on the basis of other service
7 subject to this chapter; except that benefits based on
8 service in an instructional, research or principal
9 administrative capacity in an institution of higher
10 education shall not be paid to an individual for any week
11 of unemployment which begins during the period
12 between two successive academic years, or during a
13 similar period between two regular terms, whether or
14 not successive, or during a period of paid sabbatical
15 leave provided for in the individual's contract, if the
16 individual has a contract or contracts to perform
17 services, in any such capacity for any institution or
18 institutions of higher education for both such academic
19 years or both such terms.

20 (2) Benefits based on service in employment defined
21 in subdivisions (9) and (10) of the definition of "employ-
22 ment" in section three, article one of this chapter, shall
23 be payable in the same amount, on the same terms and
24 subject to the same conditions as benefits payable on the
25 basis of other service subject to this chapter, except that:

26 (a) With respect to services in an instructional,
27 research or principal administrative capacity for an
28 educational institution, benefits shall not be paid based
29 on such services for any week commencing during the
30 period between two successive academic years or terms,
31 or during a similar period between two regular but not
32 successive terms, or during a period of paid sabbatical
33 leave provided for in the individual's contract, to any
34 individual if such individual performs such services in
35 the first of such academic years or terms and if there
36 is a contract or a reasonable assurance that such
37 individual will perform services in any such capacity for
38 any educational institution in the second of such
39 academic years or terms or after such holiday or
40 vacation period.

41 (b) With respect to services in any other capacity for
42 an educational institution, benefits shall not be paid on
43 the basis of such services to any individual for any week

44 which commences during a period between two succes-
45 sive academic years or terms if such individual per-
46 forms such services in the first of such academic years
47 or terms and there is a reasonable assurance that such
48 individual will perform such services in the second of
49 such academic years or terms, except that if compen-
50 sation is denied to any individual under this subsection
51 and such individual was not offered an opportunity to
52 perform such services for the educational institution for
53 the second of such academic years or terms, such
54 individual shall be entitled to a retroactive payment of
55 compensation for each week for which the individual
56 filed a timely claim for compensation and for which
57 compensation was denied solely by reason of this clause.

58 (c) With respect to services described in subdivisions
59 (a) and (b) of this section, benefits shall not be paid to
60 any individual for any week which commences during
61 an established and customary vacation period or holiday
62 recess if such individual performs such services in the
63 period immediately before such vacation period or
64 holiday recess, and there is a reasonable assurance that
65 such individual will perform such services in the period
66 immediately following such vacation period or holiday
67 recess.

68 (d) On and after April one, one thousand nine
69 hundred eighty-four, benefits payable on the basis of
70 services in any such capacities as specified in subdivi-
71 sions (a) and (b) of this section shall be denied as
72 specified in subdivisions (a), (b) and (c) of this section
73 to any individual who performed such services in an
74 educational institution while in the employ of an
75 educational service agency. For purposes of this
76 subdivision the term "educational service agency" means
77 a governmental agency or governmental entity which is
78 established and operated exclusively for the purpose of
79 providing such services to one or more educational
80 institutions.

ARTICLE 7. CLAIM PROCEDURE.

§21A-7-11. Benefits pending appeal.

1 Benefits found payable by decision of a deputy, appeal

2 tribunal, the board or court shall be immediately paid
3 in accordance therewith up to the week in which a
4 subsequent appellate body renders a decision, by order,
5 finding that benefits were not or are not payable. If, at
6 any appeal stage, benefits are found to be payable which
7 were found before such appeal stage to be not payable,
8 the commissioner shall immediately reinstate the
9 payment benefits. If the final decision in any case
10 determines that a claimant was not lawfully entitled to
11 benefits paid to him pursuant to a prior decision, such
12 amount of benefits so paid shall be deemed overpaid.
13 The commissioner shall recover such amount by civil
14 action or in any manner provided in this code for the
15 collection of past-due payment and shall withhold, in
16 whole or in part, as determined by the commissioner,
17 any future benefits payable to the individual and credit
18 such amount against the overpayment until it is repaid
19 in full. If the final decision in any case determines that
20 the claimant was not lawfully entitled to the benefits
21 paid to him pursuant to a prior order, any benefits so
22 paid pursuant to such prior order, shall not be charge-
23 able to the employer's account.

24 (a) Whenever the commissioner finds that a dis-
25 charged employee has received back pay at his custom-
26 ary wage rate from his employer after reinstatement,
27 such employee shall be liable to repay the benefits, if
28 any, paid to such individual during the time he was
29 unemployed. In any case in which, under this section,
30 an employee is liable to repay benefits to the commis-
31 sioner, such sum shall be collectible by civil action in
32 the name of the commissioner.

33 (b) Whenever an employer subject to this chapter is
34 required to make a payment of back pay to an individual
35 who has received unemployment compensation benefits
36 during the same period covered by the back pay award,
37 the employer shall withhold an amount equal to the
38 unemployment compensation benefits and shall repay
39 the amount withheld to the unemployment compensation
40 trust fund. If an employer fails to comply with this
41 section, the commissioner shall have the right to recover
42 from the employer the amount of unemployment

43 compensation benefits which should have been withheld
44 by a civil action.

CHAPTER 145

(S. B. 750—Originating in the Senate Committee on Finance)

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

AN ACT to amend article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a; and to further amend said chapter twenty-one-a by adding thereto a new article, designated article eight-a, relating to unemployment compensation debt generally; providing for an optional assessment on employees and employers to prevent a deficit upon the payment of benefits; authorizing the commissioner of the department of employment security to borrow money on behalf of the department of employment security to finance the repayment of funds advanced to the department of employment security by the federal government under the provisions of Section 1201 of the Social Security Act, 42 U.S.C.A. §1321; empowering the commissioner to borrow such money from the consolidated fund and the consolidated pension fund established under the provisions of section eight, article six, chapter twelve of this code, or from any private financial institution, or both; empowering the commissioner to borrow such money and issue revenue bonds as evidence of such borrowing; creating in the state treasury a special nonrevolving fund to be known as "the employment security debt note fund"; creating in the state treasury a special nonrevolving fund to be known as "the employment security debt bond fund"; describing the portion of assessments payable to such funds; authorizing the commissioner to pledge revenues of the special revenue funds to meet the requirements of a sinking fund; authorizing, by resolution of the commissioner, the issuance of bonds or notes; providing

for trust agreements for holders of bonds or notes; providing for payments from the special revenue funds to the municipal bond commission; prohibiting the commissioner from pledging the credit or taxing power of the state; exempting bonds or notes issued by the commissioner from certain taxes; providing for assessments on the gross wages of employees and an assessment on employers, and dedicating such assessments to the special revenue funds; authorizing the commissioner to adjust such assessments within certain limitations; establishing the West Virginia state board of investments as ex officio a board of investments for funds of the consolidated fund and the consolidated pension fund as they are made available for loans to the department of employment security; authorizing the board of investments to invest moneys, securities, and other assets of the consolidated fund in the form of interest-bearing loans to the department of employment security to finance the repayment of funds advanced to the department of employment security by the federal government under the provisions of Section 1201 of the Social Security Act, 42 U.S.C.A. §1321; setting forth the requirements for such loan; limiting the authority of the board of investments to make loans in an aggregate principal amount not to exceed two hundred sixty million dollars; requiring the board of investments to submit to the Legislature annually a full report of its activities so long as any loan is outstanding; and providing for the termination of the authority of the board of investments to make loans.

Be it enacted by the Legislature of West Virginia:

That article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section ten-a; and to further amend said chapter by adding thereto a new article, designated article eight-a, all to read as follows:

Article**5. Employer Coverage and Responsibility.****8A. Employment Security Debt Funds.****ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.****§21A-5-10a. Optional assessments on employers and employees.**

1 (a) On and after the first day of July, one thousand
2 nine hundred eighty-seven, if the commissioner deter-
3 mines for a given projected quarter that the rates
4 established under the provisions of section ten of this
5 article will not result in payments being made to the
6 unemployment compensation fund in an amount suffi-
7 cient to finance the payment of benefits during such
8 quarter, the commissioner shall certify such fact to the
9 governor, and the governor shall, by executive order,
10 direct the commissioner to establish a level of assess-
11 ment for employees and employers in accordance with
12 the provisions of this section which is sufficient to
13 prevent, to the extent possible, a deficit in the funds
14 available to pay benefits to eligible individuals.

15 (b) Pursuant to such executive order, every employer,
16 contributing and reimbursable, subject to this chapter,
17 shall be required to withhold from all persons in his
18 employment an assessment which shall be in an amount
19 not to exceed fifteen one hundredths (15/100) of one
20 percent of an employee's gross wages, which amount,
21 together with an assessment contributed by the em-
22 ployer in an amount as determined in accordance with
23 the provisions of subsection (c) of this section, except for
24 reimbursable employers who shall not be assessed, shall
25 be paid to the department of employment security on a
26 form prescribed by the commissioner, at the same time
27 and under the same conditions as the quarterly contri-
28 bution payments required under the provisions of
29 section seven, article five, chapter twenty-one-a of this
30 code. The commissioner shall have the right to collect
31 any delinquent assessments under this section in the
32 same manner as provided for in section sixteen, article
33 five, chapter twenty-one-a of this code; and in addition,
34 any delinquency hereunder shall bear interest as set

35 forth in section seventeen, article five, chapter twenty-
36 one-a of this code.

37 (c) The commissioner shall establish the exact
38 amounts of the employers' and employees' assessments
39 at a level sufficient to generate the revenues needed to
40 prevent a deficit which would otherwise result from the
41 payment of benefits to eligible individuals, subject only
42 to the limitation established in the preceding subsection
43 (b) of this section. After determining the level of
44 assessment on the gross wages of employees, the
45 commissioner shall determine a rate of assessment to be
46 imposed upon employers, except reimbursable employ-
47 ers, which rate shall be expressed as a percentage of
48 wages as defined in section three, article one of this
49 chapter, and which is sufficient to cause the total
50 statewide assessment on such employers to equal the
51 total statewide assessment imposed upon employees.

ARTICLE 8A. EMPLOYMENT SECURITY DEBT FUNDS.

- §21A-8A-1. Commissioner of department of employment security authorized to borrow money to repay funds advanced by the federal government; employment security debt fund established.
- §21A-8A-2. Employment security debt note fund created; employment security debt bond fund created; pledge of funds for sinking fund.
- §21A-8A-3. Issuance of revenue bonds or notes.
- §21A-8A-4. Trust agreement for holders of bonds or notes.
- §21A-8A-5. Municipal bond commission for payment of bonds or notes.
- §21A-8A-6. Credit of state not pledged.
- §21A-8A-7. Bonds or notes exempt from taxation.
- §21A-8A-8. Assessments; dedication of assessments; commissioner's authority to adjust assessments.
- §21A-8A-9. West Virginia board of investments to act as board of investments for purposes of this article; powers.
- §21A-8A-10. Authority of the board of investments.
- §21A-8A-11. Requirements of loan.
- §21A-8A-12. Limitations on loan authority.
- §21A-8A-13. Reports to the Legislature.
- §21A-8A-14. Termination.
- §21A-8A-1. Commissioner of department of employment security authorized to borrow money to repay funds advanced by the federal government; employment security debt fund established.**

1 (a) For the single purpose of financing the repayment

2 of funds advanced to the department of employment
3 security by the federal government under the provisions
4 of Section 1201 of the Social Security Act, 42 U.S.C.A.
5 §1321, for such advances which were made prior to the
6 first day of July, one thousand nine hundred eighty-
7 seven, the commissioner of the department of employ-
8 ment security is authorized on behalf of the department
9 of employment security, as provided in this article:

10 (1) To borrow money, as contractual indebtedness, not
11 bonded, and issue notes as evidence of such borrowing;
12 and

13 (2) To borrow money and issue revenue bonds as
14 evidence of such borrowing.

15 (b) Regardless of whether the repayment of funds
16 advanced by the federal government is to be accomp-
17 lished solely by issuing notes in accordance with the
18 provisions of subdivision (1), subsection (a) of this
19 section, solely by the issuance of bonds in accordance
20 with the provisions of subdivision (2) of such subsection,
21 or by a combination of such notes and bonds, the
22 commissioner shall provide for the issuance of such
23 notes or bonds in such principal amounts and upon such
24 terms as shall be necessary to provide sufficient money
25 for repaying, in whole, such funds advanced by the
26 federal government.

27 (c) The commissioner may borrow money as provided
28 for in subdivision (1), subsection (a) of this section, from
29 the consolidated fund and the consolidated pension fund
30 established under the provisions of section eight, article
31 six, chapter twelve of this code, or may borrow money
32 from any private financial institution or institutions, or
33 may borrow from both such funds and such institution
34 or institutions, or may borrow money as provided for in
35 subdivision (2), subsection (a) of this section, by issuing
36 revenue bonds. Prior to financing the repayment of
37 funds advanced by the federal government, the commis-
38 sioner shall ascertain which option or combination of
39 options presents the terms most economically favorable
40 to the commissioner and the employers and employees

41 of this state, and shall proceed to refinance the repay-
42 ment in accordance with such terms.

43 (d) The principal of and interest on such bonds and
44 notes shall be payable solely from the special nonrevolv-
45 ing funds created under the provisions of section two of
46 this article.

**§21A-8A-2. Employment security debt note fund created;
employment security debt bond fund
created; pledge of funds for sinking fund.**

1 (a) There is hereby created in the state treasury a
2 special nonrevolving revenue fund to be known as "the
3 employment security debt note fund," into which shall
4 be paid a portion of all funds derived from the assess-
5 ments hereinafter set forth in this article. The portion
6 of such assessments payable to the fund shall be an
7 amount directly proportional to the ratio which the
8 principal and interest on notes issued under this article
9 bears to the total amount of principal and interest to be
10 paid on indebtedness incurred under the provisions of
11 this article. This fund may also receive funds from any
12 other source, either state or federal.

13 (b) There is hereby created in the state treasury a
14 special nonrevolving revenue fund to be known as "the
15 employment security debt bond fund," into which shall
16 be paid a portion of all funds derived from the assess-
17 ments hereinafter set forth in this article. The portion
18 of such assessments payable to the fund shall be an
19 amount directly proportional to the ratio which the
20 principal and interest on bonds issued under this article
21 bears to the total amount of principal and interest to be
22 paid on indebtedness incurred under the provisions of
23 this article. This fund may also receive funds from any
24 other source, either state or federal.

25 (c) The commissioner shall have authority to pledge
26 all of the revenue paid into a fund created by this section
27 to meet the requirements of any sinking fund estab-
28 lished pursuant to section five of this article in connec-
29 tion with any revenue bond issue or notes authorized by
30 this article, including a reserve fund for the payment
31 of the principal of and interest on such revenue bond

32 issue or notes when other moneys in the sinking fund
33 are insufficient therefor; and may provide in the
34 resolution authorizing any issue of such bonds or notes,
35 and in any trust agreement made in connection there-
36 with, for such priorities on the revenues paid into the
37 special revenue fund as may be necessary for the
38 protection of the prior rights of the holders of bonds or
39 notes issued at different times under the provisions of
40 this article.

§21A-8A-3. Issuance of revenue bonds or notes.

1 The issuance of bonds or notes under the provisions
2 of this article shall be authorized by a resolution of the
3 commissioner, which shall provide for the issuance of
4 bonds or notes in an amount sufficient to provide moneys
5 sufficient to repay the federal government for all
6 advances and interest thereon made to the West
7 Virginia department of employment security pursuant
8 to Title 42 U.S.C.A. §1321, which such advances were
9 made prior to the first day of July, one thousand nine
10 hundred eighty-seven: *Provided*, That competitive sealed
11 bids shall be used to determine the bond issuance agent.
12 Such resolution shall prescribe the rights and duties of
13 the bondholders or noteholders and the commissioner,
14 and for such purpose may prescribe the form of the trust
15 agreement hereinafter referred to. The bonds or notes
16 shall be of such series, bear such date or dates, mature
17 at such time or times, bear interest at such rate or rates,
18 be payable at such times and intervals; be in such
19 denominations, be in such form, either coupon or fully
20 registered without coupons, or book entry, carrying such
21 registration exchangeability and interchangeability
22 privileges; be payable in such medium of payment and
23 at such place or places; be subject to such terms of such
24 redemption prices, and be entitled to such priorities on
25 the revenues paid into the special revenue fund as may
26 be provided in the resolution authorizing the issuance
27 of the bonds or notes or in any trust agreement made
28 in connection therewith. The bonds or notes shall be
29 signed by the governor and by the commissioner, under
30 the great seal of the state, attested by the secretary of
31 state, and the coupons attached thereto, if any, shall

32 bear the facsimile signature of the commissioner. In
33 case any of the officers whose signatures appear on the
34 bonds or notes or coupons cease to be such officers before
35 the delivery of such bonds, such signatures shall
36 nevertheless be valid and sufficient for all purposes the
37 same as if such officers had remained in office until such
38 delivery.

39 Such bonds or notes shall be sold in such manner as
40 the commissioner may determine to be for the best
41 interests of the state, taking into consideration the
42 financial responsibility of the purchaser. The proceeds
43 of such bonds or notes shall be used solely for the
44 repayment of advances and interest under the provisions
45 of Title 42 U.S.C.A. §1321.

46 The bonds or notes issued under the provisions of this
47 article shall be and have all the qualities of negotiable
48 instruments under the law merchant and the Uniform
49 Commercial Code of this state.

50 Bonds or notes issued under the provisions of this
51 article shall be legal investments for banks, building
52 and loan associations, and insurance companies organ-
53 ized under the laws of the state of West Virginia and
54 for business development corporations organized pursu-
55 ant to article fourteen, chapter thirty-one of the code of
56 West Virginia.

§21A-8A-4. Trust agreement for holders of bonds or notes.

1 The commissioner may enter into an agreement or
2 agreements with any trust company, or with any bank
3 having the powers of a trust company, either within or
4 outside the state, as trustee for the holders of bonds or
5 notes issued hereunder, setting forth therein such duties
6 of the commissioner in respect to the payment of the
7 bonds or notes, the conservation and application of all
8 moneys, the security for moneys on hand or on deposit,
9 and the rights and remedies of the trustee and the
10 holders of the bonds or notes, as may be agreed upon
11 with the original purchasers of such bonds or notes,
12 except that competitive bids shall be used to determine
13 such trust company; and including therein provisions

14 restricting the individual right of action of bondholders
15 or noteholders as is customary in trust agreements
16 respecting bonds or notes and debentures of corpora-
17 tions, protecting and enforcing the rights and remedies
18 of the trustee and the bondholders or noteholders.

**§21A-8A-5. Municipal bond commission for payment of
bonds or notes.**

1 From the special revenue funds established in accor-
2 dance with the provisions of section two of this article,
3 the commissioner shall make periodic payments to the
4 state municipal bond commission in an amount suffi-
5 cient to meet the requirements of any issue of bonds or
6 notes sold under the provisions of this article, as
7 specified in the resolution of the commissioner authoriz-
8 ing the issue and in any trust agreement entered into
9 in connection therewith. The payment so made shall be
10 placed by the commissioner in a special sinking fund
11 which is hereby pledged to and charged with the
12 payment of the principal of the bonds or notes of such
13 issue and the interest thereon, and to the redemption or
14 repurchase of such bonds or notes, such sinking fund to
15 be a fund for all bonds or notes of such issue without
16 distinction or priority of one over another. The moneys
17 in the special sinking fund, less such reserve for
18 payment of principal and interest as may be required
19 by the resolution of the commissioner authorizing the
20 issue and any trust agreement made in connection
21 therewith, may be used for the redemption of any of the
22 outstanding bonds or notes payable from such fund
23 which by their terms are then redeemable, or for the
24 purchase of bonds or notes at the market price; but not
25 exceeding the price, if any, at which such bonds or notes
26 shall in the same year be redeemable; and all bonds or
27 notes redeemed or purchased shall forthwith be can-
28 celed and shall not again be issued.

§21A-8A-6. Credit of state not pledged.

1 No provisions of this article shall be construed to
2 authorize the commissioner at any time or in any
3 manner to pledge the credit or taxing power of the state,
4 nor shall any of the obligations or debts created by the

5 commissioner under the authority herein granted be
6 deemed to be obligations of the state.

7 The bonds and notes authorized hereby shall contain
8 on their face a statement to the effect that: (1) Neither
9 the state of West Virginia nor any agency, political
10 corporation or political subdivision of the state of West
11 Virginia is obligated to pay the principal of or interest
12 on the bonds or notes except as provided in this article;
13 and (2) neither the faith and credit nor the taxing power
14 of the state of West Virginia or any agency, political
15 corporation or political subdivision of the state of West
16 Virginia is pledged to the payment of the principal of
17 or interest on the bonds or notes except as provided by
18 this article.

§21A-8A-7. Bonds or notes exempt from taxation.

1 All bonds or notes issued by the commissioner under
2 the provisions of this article and the income therefrom
3 shall be exempt from taxation by the state of West
4 Virginia, or by any county, school district or municipal-
5 ity thereof, except inheritance, estate and transfer taxes.

**§21A-8A-8. Assessments; dedication of assessments;
commissioner's authority to adjust
assessments.**

1 (a) On and after the first day of July, one thousand
2 nine hundred eighty-seven, every employer, contribut-
3 ing and reimbursable, subject to this chapter, shall be
4 required to withhold from all persons in his employment
5 an assessment which shall be in an amount not to exceed
6 thirty-five one-hundredths ($35/100$) of one percent of
7 said employee's gross wages, which amount, together
8 with an assessment contributed by the employer in an
9 amount as determined in accordance with the provisions
10 of subsection (b) of this section, except for reimbursable
11 employers who shall not be assessed, shall be paid to the
12 department of employment security on a form pres-
13 cribed by the commissioner, at the same time and under
14 the same conditions as the quarterly contribution
15 payments required under the provisions of section seven,
16 article five, chapter twenty-one-a of this code. The
17 commissioner shall have the right to collect any

18 delinquent assessments under this section in the same
19 manner as provided for in section sixteen, article five,
20 chapter twenty-one-a of this code; and in addition, any
21 delinquency hereunder shall bear interest as set forth
22 in section seventeen, article five, chapter twenty-one-a
23 of this code.

24 (b) The commissioner shall establish the exact
25 amounts of the employers' and employees' assessments
26 at a level sufficient to generate the revenues needed to
27 retire the bonds or notes issued pursuant to this article
28 and to pay deferred interest owed to the federal
29 government when due, subject only to the limitation
30 established in the preceding subsection (a) of this
31 section. After determining the level of assessment on the
32 gross wages of employees, the commissioner shall
33 determine a rate of assessment to be imposed upon
34 employers, except reimbursable employers, which rate
35 shall be expressed as a percentage of wages, as defined
36 in section three, article one of this chapter, except that
37 for purposes of this section such wages shall include all
38 of that part of the remuneration paid to an employee
39 that is less than twenty-one thousand dollars during any
40 calendar year, and which is sufficient to cause the total
41 statewide assessment on such employers to equal the
42 total statewide assessment imposed upon employees.

43 (c) The proceeds derived from the assessments pro-
44 vided for in this section shall be placed in the special
45 nonrevolving revenue funds established pursuant to the
46 provisions of section two of this article to be held by the
47 commissioner separate and apart from all other funds
48 and accounts created under this chapter and the funds,
49 together with the interest derived therefrom, shall be
50 pledged and utilized only for the repayment of bonds or
51 notes issued under the provisions of this article and the
52 payment of deferred interest owed to the federal
53 government as the same becomes due. At such time as
54 there are no longer any bonds, notes or other evidences
55 of indebtedness outstanding which are payable from the
56 special nonrevolving revenue funds, any remaining
57 balance in these special accounts shall be paid into the
58 unemployment compensation trust fund. The commis-

59 sioner may establish additional special accounts and
60 subaccounts with the employment security administra-
61 tion fund for the purpose of identifying more precisely
62 the sources of payments into and disbursements from
63 the employment security administration fund.

64 (d) Prior to the beginning of any quarter during
65 which bonds or notes authorized by this article will be
66 outstanding, the commissioner may adjust the amount
67 of the assessment set forth in subsection (a) of this
68 section; however, the amount is never to exceed thirty-
69 five one-hundredths (35/100) of one percent of each said
70 employee's gross wages. The assessment shall cease
71 when all the bonds or notes are repaid.

**§21A-8A-9. West Virginia board of investments to act as
board of investments for purposes of this
article; powers.**

1 The West Virginia state board of investments as
2 heretofore created and constituted under the provisions
3 of article six, chapter twelve of this code, shall be ex
4 officio a board of investments for funds of the special
5 investment funds designated as the consolidated fund
6 and the consolidated pension fund as they are made
7 available for investment in accordance with the provi-
8 sions of this article, and as such, the board of invest-
9 ments may exercise all of the powers and functions
10 granted to it pursuant to the provisions of said article
11 six of chapter twelve in carrying out the duties assigned
12 to it under the provisions of this article.

§21A-8A-10. Authority of the board of investments.

1 Upon application by the commissioner of the depart-
2 ment of employment security, the board of investments
3 shall invest moneys, securities, and other assets of the
4 consolidated fund and the consolidated pension fund
5 established under the provisions of section eight, article
6 six, chapter twelve of this code, in the form of interest-
7 bearing loans to the department of employment security
8 to finance the repayment of funds advanced to the
9 department of employment security by the federal
10 government under the provisions of Section 1201 of the
11 Social Security Act, 42 U.S.C.A. §1321. Such loan shall

12 be made, if at the time of the commitment to make the
13 loan, the board of investments determines that there
14 exists a plan for the repayment of such loan which is
15 satisfactory to the board of investments and which can
16 be carried out by the department of employment
17 security, that the loan is needed to assist the department
18 of employment security to repay advances made from
19 the federal unemployment account in the unemployment
20 trust fund in accordance with the provisions of Title 42
21 U.S.C.A. §1321. The board shall also determine that all
22 of the proceeds of a loan made under the provisions of
23 this article will be used to repay advances made to the
24 department of employment security from the federal
25 unemployment account in the unemployment trust fund
26 in accordance with the provisions of Title 42 U.S.C.A.
27 §1321, which advances were made prior to the first day
28 of July, one thousand nine hundred eighty-seven. Any
29 loss to the principal of the consolidated fund or the
30 consolidated pension fund that occurs because of any
31 loan authorized by this article shall be deducted only
32 from the state government moneys in such funds.

§21A-8A-11. Requirements of loan.

1 (a) A loan made by the board of investments from the
2 consolidated fund or the consolidated pension fund
3 under the provisions of this article will bear interest at
4 a rate determined by the board of investments not to
5 exceed seven percent per annum. At the discretion of the
6 board of investments, a loan made under the provisions
7 of this article may be renewed if prevailing economic
8 and financial conditions in the marketplace would
9 permit such renewal to be prudently made: *Provided,*
10 That any such renewal notes shall not be issued by the
11 commissioner which would mature after the date on
12 which the original notes would have otherwise matured.

13 (b) The date of maturity of notes issued by the
14 commissioner shall, in all cases, be determined by the
15 board of investments, consistent with its fiduciary
16 responsibilities.

§21A-8A-12. Limitations on loan authority.

1 The authority of the board of investments to make

- 2 loans under the provisions of this article shall not at any
- 3 time exceed two hundred sixty million dollars in the
- 4 aggregate principal amount outstanding.

§21A-8A-13. Reports to the Legislature.

- 1 The board of investments shall submit to the Legis-
- 2 lature annually a full report of its activities under this
- 3 article so long as any loan made by the board under the
- 4 provisions of this article is outstanding.

§21A-8A-14. Termination.

- 1 The authority of the board of investments to make
- 2 loans under this article expires on the thirty-first day
- 3 of December, one thousand nine hundred eighty-seven.

CHAPTER 146

(Com. Sub. for H. B. 2892—By Delegate Southern)

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

AN ACT to amend and reenact sections three hundred seven and four hundred seven, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the uniform commercial code; secured transactions; perfecting security interest in farm products; establishing a central filing system for perfecting security interests against farm product buyers; and procedures relating thereto.

Be it enacted by the Legislature of West Virginia:

That sections three hundred seven and four hundred seven, 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 PAPERS.

§46-9-307. Protection of buyers of goods; protection of buyers of farm products; contents of notice of security interest.

§46-9-407. Information from filing officer; central indexing system for recording security interest in farm products; contents.

§46-9-307. Protection of buyers of goods; protection of buyers of farm products; contents of notice of security interest.

1 (1) A buyer in ordinary course of business as defined
2 in subsection nine, section two hundred one, article one
3 of this chapter, other than a person buying farm
4 products from a person engaged in farming operations,
5 takes free of a security interest created by his seller even
6 though the security interest is perfected and even
7 though the buyer know of its existence.

8 (2) In the case of consumer goods, a buyer takes free
9 of a security interest even though perfected if he buys
10 without knowledge of the security interest, for value and
11 for his own personal, family or household purposes
12 unless prior to the purchase the secured party has filed
13 a financing statement covering such goods.

14 (3) A buyer, other than a buyer in ordinary course of
15 business, takes free of a security interest to the extent
16 that it secures future advances made after the secured
17 party acquires knowledge of the purchase, or more than
18 forty-five days after the purchase, whichever first
19 occurs, unless made pursuant to a commitment entered
20 into without knowledge of the purchase and before the
21 expiration of the forty-five day period.

22 (4) A secured party may enforce a security interest in
23 farm products against a buyer in the ordinary course
24 of business who purchases farm products from a person
25 engaged in farming operations or against a commission
26 merchant or selling agent who in the ordinary course
27 of business sells farm products for a person engaged in
28 farming operations, only where the secured party has
29 signed and filed in the office of the secretary of state
30 a form containing the following information:

31 (a) The name and address of the borrower;

32 (b) The borrower's signature;

33 (c) The name and address of the secured party;

34 (d) The social security number of the borrower, or in
35 the case of a borrower doing business other than as an

36 individual, the borrower's internal revenue service
37 taxpayer identification number;

38 (e) A description of the farm products subject to the
39 security interest including the amount of such products
40 where applicable; and

41 (f) A reasonable description of the real estate, includ-
42 ing county, where or upon which the farm products are
43 located.

44 (5) The form described in subsection four of this
45 section must be amended in writing within three
46 months, and similarly signed and filed, to reflect
47 material changes. The effectiveness and continuation of
48 the form is to be treated as if it were a financing
49 statement.

50 (6) The provisions of section two hundred one, article
51 one of this chapter notwithstanding, as used in this
52 subsection and in subsections four and five of this
53 section or in subsections three, four, five and six of
54 section four hundred seven of this article, unless the
55 context in which used requires otherwise, the term:

56 (a) "Buyer in the ordinary course of business" means
57 a person who, in the ordinary course of business, buys
58 farm products from a person engaged in farming
59 operations who is in the business of selling farm
60 products;

61 (b) "Commission merchant" shall mean any person
62 engaged in the business of receiving any farm product
63 for sale, on commission, or for or on behalf of another
64 person;

65 (c) "Person" means any individual, partnership,
66 corporation, trust or any other business entity; and

67 (d) "Selling agent" means any person, other than a
68 commission merchant, who is engaged in the business
69 of negotiating the sale and purchase of any farm product
70 on behalf of a person engaged in farming operations.

**§46-9-407. Information from filing officer; central index-
ing system for recording security interest in
farm products; contents.**

1 (1) If the person filing any financing statement,

2 termination statement, statement of assignment, or
3 statement of release, furnishes the filing officer a copy
4 thereof, the filing officer shall upon request note upon
5 the copy the file number and date and hour of the filing
6 of the original and deliver or send the copy to such
7 person.

8 (2) Upon request of any person, the secretary of state
9 shall issue his certificate showing whether there is on
10 file in his office on the date and hour stated therein, any
11 presently effective financing statement naming a
12 particular debtor and any statement of assignment
13 thereof and if there is, giving the date and hour of filing
14 of each such statement and the names and addresses of
15 each secured party therein. The uniform fee for such a
16 certificate shall be two dollars if the request for the
17 certificate is in the standard form prescribed by the
18 secretary of state and otherwise shall be five dollars plus
19 fifty cents for each financing statement and for each
20 statement of assignment reported therein. Upon request
21 the filing officer shall furnish a copy of any filed
22 financing statement or statement of assignment for a
23 uniform fee of fifty cents per page.

24 (3) The secretary of state shall develop and implement
25 a central indexing system containing the information
26 filed with his office pursuant to subsection four, section
27 three hundred seven of this article. Under this system,
28 the secretary shall record the date and time of filing and
29 compile the information into a master list organized
30 according to farm products. The list shall be organized
31 within each farm product category in alphabetical order
32 according to the last name of the borrower, or in the
33 case of borrowers doing business other than as individ-
34 uals, the first word in the name of such borrower in
35 numerical order according to the social security or
36 taxpayer identification number of the borrower, geogra-
37 phically by county and by crop year. The master list
38 shall also contain the name and address of the secured
39 party, the name and address of the borrower, a
40 description of the farm products, including amount
41 where applicable, subject to the security interest, and a
42 reasonable description of the real estate, including the

43 county where or upon which the farm products are
44 located.

45 (4) The secretary of state shall maintain a list of all
46 buyers of farm products, commission merchants and
47 selling agents who register with the secretary of state
48 indicating an interest in receiving the lists described in
49 subsection five of this section.

50 (5) The secretary of state shall distribute on a regular
51 basis as determined by the secretary of state to each
52 buyer, commission merchant and selling agent regis-
53 tered under subsection four, a copy in written or printed
54 form of those portions of the master list which the buyer,
55 commission merchant or selling agent has indicated an
56 interest in receiving.

57 (6) Upon the request of any person, the secretary of
58 state shall provide within twenty-four hours an oral
59 confirmation of the filing of the form described in
60 subsection four, section three hundred seven of this
61 article, followed by a written confirmation.

CHAPTER 147

(S. B. 22—By Senators Spears and Harman)

[Passed February 10, 1987; in effect July 1, 1987. Approved by the Governor.]

AN ACT to amend and reenact section five, article one-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the commission on uniform state laws following a performance and fiscal audit by the joint committee on government operations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. COMMISSION ON UNIFORM STATE LAWS.**§29-1A-5. Reestablishment of commission.**

1 After having conducted a performance and fiscal
2 audit through its joint committee on government
3 operations, pursuant to section nine, article ten, chapter
4 four of this code, the Legislature hereby finds and
5 declares that the commission on uniform state laws
6 should be continued and reestablished. Accordingly,
7 notwithstanding the provisions of section four, article
8 ten, chapter four of this code, the commission on
9 uniform state laws shall continue to exist until the first
10 day of July, one thousand nine hundred ninety-three.

CHAPTER 148

(S. B. 215—By Senators Whitacre, Holliday, Spears, Tucker and Harman)

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

AN ACT to amend and reenact sections twenty-three and twenty-three-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article three-b, all relating to commercial whitewater rafting; clarifying and defining terms; prescribing the scope, amount and usage of licenses and licensing fees; term of service for certain members of the commercial whitewater advisory board; when board to meet; requiring a majority of the members to be present to conduct business; expanding the rule-making authority of the board with respect to rivers not designated as whitewater zones; limitations; removing certain outdated provisions and the sunseting of the board; creating the whitewater responsibility act; declaring legislative purpose; definitions; setting forth duties of commercial whitewater outfitters and commercial whitewater guides; duties of participants; prohibiting certain activities of such participants; and setting forth

limitations on the liability of commercial whitewater outfitters and commercial whitewater guides.

Be it enacted by the Legislature of West Virginia:

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

Article

2. Wildlife Resources.

3B. Whitewater Responsibility Act.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-23. Outfitters and guides — Generally; definitions.

§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.

§20-2-23. Outfitters and guides — Generally; definitions.

1 (a) Services of outfitters and guides for the benefit
 2 and convenience of hunters, fishermen and others in this
 3 state are recognized as essential, and such outfitters and
 4 guides may be licensed and authorized to serve as
 5 provided in this article. The director is hereby
 6 authorized to promulgate rules and regulations on
 7 services of outfitters and guides as herein authorized
 8 and defined.

9 (b) The term "outfitter," as used herein, means and
 10 includes any person who, operating from any temporary
 11 or permanent camp, private or public lodge, or private
 12 or incorporated home situate within this state, provides
 13 for monetary profit or gain, saddle or pack animals or
 14 other animals, vehicles, boats, conveyances or equip-
 15 ment, or guide services for any person or persons
 16 hunting game animals, game birds, fishing or taking
 17 expeditions, both land and water, in this state. The term
 18 "outfitter" shall not include, however, any person who
 19 occasionally for accommodation or favor rather than
 20 profit or gain, rents equipment to hunters, fishermen or
 21 others as a service incidental to his principal occupation
 22 or business without advertising outfitter or guide
 23 services or holding out to the public the offering of such

24 services. The term "guide," as used herein, includes and
25 embraces outfitter services and the term "outfitter"
26 includes and embraces guide services, but the applicant
27 for any license hereunder may in his or her application
28 elect to be designated as an outfitter or guide.

29 (c) The term "commercial whitewater outfitter," as
30 used herein, means any person, partnership, corporation
31 or other organization, or any combination thereof, duly
32 authorized and operating from within or from without
33 the state, which for monetary profit or gain, provides
34 whitewater expeditions or rents whitewater craft or
35 equipment for use in whitewater expeditions on any
36 river, portions of rivers or waters of the state in
37 accordance with this article.

38 The term "commercial whitewater guide," as used
39 herein, means any person who is an owner, agent or
40 employee of a commercial whitewater outfitter, and who
41 is qualified and authorized to provide services for
42 whitewater expeditions in the state in accordance with
43 this article.

**§20-2-23a. Special studies of whitewater rafting zones to
be conducted; creation of advisory
commission to promulgate rules and regu-
lations; special fees imposed; time limitation.**

1 (a) The Legislature finds that the recent increase in
2 the number of persons engaging in the sport of white-
3 water rafting has resulted in overcrowding, safety and
4 ecological problems along areas and portions of rivers
5 and waters in this state necessitating the study,
6 investigation and regulation of whitewater rafting to
7 promote the safe and equitable enjoyment of this sport
8 by all persons seeking to engage in it as recreational
9 activity. The Legislature further finds it desirable to
10 require the director of the department of natural
11 resources, pending such study and investigation and the
12 promulgation of necessary rules and regulations appli-
13 cable to such areas and portions of rivers and waters,
14 to restrict, deny or postpone the issuance of licenses to
15 additional commercial whitewater outfitters seeking to
16 operate in such areas and portions of rivers and waters

17 in this state until the promulgation of such rules and
18 regulations applicable thereto and to provide for the
19 creation of an advisory board to promulgate such rules
20 and regulations.

21 (b) The director shall investigate and study
22 commercial whitewater rafting, outfitting and activities
23 related thereto, which rafting, outfitting or activities
24 take place along the rivers or waters of this state. The
25 director shall designate any such rivers or waters or any
26 portions thereof, which herein are referred to as
27 "whitewater zones" for which commercial whitewater
28 rafting, outfitting and activities are to be investigated
29 and studied, and shall determine the order and the
30 periods of time within which such investigations and
31 studies are to be conducted. The director shall first
32 investigate and study those whitewater zones which the
33 director finds to present serious problems requiring
34 immediate regulation, including without limitation,
35 safety hazards and problems of overcrowding or
36 environmental misuse.

37 (c) Upon the filing of a written notice to be entered
38 upon the records of the department containing the
39 designation and reasonable description of the
40 whitewater zone to be investigated and studied pursuant
41 to subsection (b) above, the director may not issue
42 licenses to additional commercial whitewater outfitters
43 seeking to operate in or for the whitewater zone
44 described in the notice. This limitation on additional
45 licenses shall continue until the director has completed
46 investigation and study of the whitewater zone desig-
47 nated in the notice and the rules and regulations
48 applicable to such zone are promulgated in accordance
49 with this section: *Provided*, That the director may issue
50 additional licenses for such whitewater zones during the
51 study period and prior to the promulgation of the rules
52 and regulations applicable to a zone, if the director finds
53 that such license would not interfere with the conduct
54 of the pending investigation and study, and the issuance
55 of such additional license is in the best interests of
56 persons seeking to enjoy whitewater rafting and the
57 interests of the state in promotion of tourism and the

58 recreational and ecological use of the state's natural
59 resources.

60 (d) In lieu of the annual license fee set forth in section
61 twenty-six of this article, the annual license fee shall be
62 five hundred dollars for each river on which a commer-
63 cial whitewater outfitter operates. Such annual per
64 river license fee shall be limited to the Cheat, Gauley,
65 New, Shenandoah and Tygart Rivers. The annual
66 license fee for a commercial whitewater outfitter
67 operating on a river not so designated shall be five
68 hundred dollars regardless of the number of rivers
69 operated on. A commercial whitewater outfitter who is
70 operating on an above designated river and who has
71 paid the annual per river license fee may not be
72 required to pay an additional annual license fee to
73 operate on a nondesignated river. The commercial
74 whitewater outfitter license shall be issued by the
75 director and shall be for a period of ten years. Such
76 license is subject to the bonding provisions set forth in
77 section twenty-six of this article and the revocation
78 provisions set forth in the rules and regulations
79 promulgated by the commercial whitewater advisory
80 board. In addition to such annual license fee, each
81 commercial whitewater outfitter, operating within a
82 whitewater zone under investigation and study as
83 provided in subsection (c) of this section, shall pay to the
84 director the sum of two hundred fifty dollars as a special
85 study fee which shall be paid within three months after
86 the date of the notice and designation of the whitewater
87 zone to be studied. The annual license fee and the special
88 study fee may be used to offset and pay for the expenses
89 and costs of such investigations and studies, the
90 promulgation of rules and regulations pursuant to this
91 section, the enforcement of the provisions of this section
92 and the reimbursement of expenses incurred by
93 members of the commercial whitewater advisory board.

94 (e) Upon official designation by the director of the
95 first whitewater zone to be studied as provided in
96 subsection (b) of this section, the director shall appoint
97 a commercial whitewater advisory board. Such board
98 shall consist of two staff employees of the department;

99 the commissioner of the department of commerce; the
100 superintendent of the New River Gorge National Park
101 or his designee; and three persons representing three
102 different licensed commercial whitewater outfitters
103 currently operating within the state: *Provided*, That one
104 person shall represent the small commercial whitewater
105 outfitters in West Virginia which are those outfitters
106 who have a license allotment, as of the first day of July,
107 one thousand nine hundred eighty-five, of less than one
108 hundred persons on streams or rivers where total use
109 is limited; and three residents of the state who represent
110 the consumers of commercial whitewater rafting in the
111 state, one of whom shall represent the private river
112 users: *Provided, however*, That for purposes of the
113 appointment of the commercial whitewater outfitters
114 and consumer members of the board, there shall be
115 designated three regions within the state as follows:
116 Region one, the counties of Jackson, Roane, Calhoun,
117 Gilmer, Lewis, Upshur, Randolph, Tucker, Barbour,
118 Preston, Taylor, Monongalia, Marion, Harrison,
119 Doddridge, Ritchie, Wirt, Wood, Pleasants, Tyler,
120 Wetzell, Marshall, Ohio, Brooke and Hancock; region
121 two, the counties of Greenbrier, Pocahontas, Pendleton,
122 Hardy, Grant, Mineral, Hampshire, Morgan, Berkeley
123 and Jefferson; region three, the counties of Mason,
124 Putnam, Kanawha, Clay, Braxton, Webster, Nicholas,
125 Fayette, Summers, Monroe, Mercer, Raleigh, Wyoming,
126 McDowell, Mingo, Logan, Boone, Wayne, Cabell and
127 Lincoln. The director shall appoint the members
128 representing commercial whitewater outfitters operat-
129 ing in each of the three regions so that one of such
130 members comes from each region. The director shall
131 likewise appoint the citizen consumer members so that
132 one of such members comes from each region. The
133 director shall serve as an ex officio member of the board
134 and shall serve as chairperson at meetings.

135 On the first day of July, one thousand nine hundred
136 eighty-seven, the current commercial whitewater
137 outfitter and consumer representatives on the board
138 shall be appointed by the director to serve as follows:
139 The region one representatives for a term of one year,
140 the region two representatives for a term of two years

141 and the region three representatives for a term of three
142 years. Thereafter, as the respective terms of the
143 members expire, the director shall appoint commercial
144 whitewater outfitter and consumer representatives from
145 the respective regions, whose terms shall be three years
146 from the day on which their immediate predecessors'
147 terms expire. No commercial whitewater outfitter is
148 eligible for successive appointments to the board.

149 (f) The commercial whitewater advisory board shall
150 participate in the investigations and studies conducted
151 by the director. The board shall meet upon the call of
152 the chairperson or a majority of the members of the
153 board and shall meet within a reasonable time after
154 completion of the director's investigation and study
155 relative to each designated whitewater zone. However,
156 the board shall meet at least once every six months and
157 shall conduct business when a majority of the members
158 are present. At such meetings, the board shall review
159 all data, materials and relevant findings compiled by
160 the director relating to the investigation and study then
161 under consideration and, as soon as practicable thereaf-
162 ter, the board shall promulgate rules and regulations to
163 govern and apply to that designated whitewater zone.
164 The board shall also promulgate rules and regulations
165 to govern and apply to commercial whitewater outfitters
166 operating on rivers not designated as whitewater zones.
167 Such rules and regulations shall include, but not be
168 limited to, the following: (1) Minimum safety require-
169 ments for equipment; (2) criteria for increasing or
170 limiting the number of commercial whitewater
171 outfitters operating in whitewater zones; (3) standards
172 for the size and number of rafts and numbers of persons
173 transported in rafts; and (4) qualifications of commer-
174 cial whitewater guides. However, the board may not
175 limit the number of commercial whitewater outfitters
176 operating on rivers not designated as whitewater zones,
177 nor may the board limit the number of rafts or persons
178 transported in rafts by commercial whitewater outfit-
179 ters on rivers not designated as whitewater zones. Board
180 members shall be paid all reasonable and necessary
181 expenses incurred in the exercise of their duties.

182 (g) On rivers designated as whitewater zones, the
183 board shall set the number of persons transported in
184 rafts, pursuant to subdivision three, subsection (f) of this
185 section, at not less than the total allocation in effect on
186 the first day of July, one thousand nine hundred eighty-
187 five.

188 (h) Upon promulgation of such rules and regulations,
189 the director shall immediately commence enforcement
190 of the rules and regulations promulgated by the board.
191 The promulgation of such rules and regulations and any
192 revision thereof shall be subject to the provisions of
193 chapter twenty-nine-a of this code.

ARTICLE 3B. WHITEWATER RESPONSIBILITY ACT.

§20-3B-1. Legislative purposes.

§20-3B-2. Definitions.

§20-3B-3. Duties of commercial whitewater outfitters and commercial
whitewater guides.

§20-3B-4. Duties of participants.

§20-3B-5. Liability of commercial whitewater outfitters and commercial
whitewater guides.

§20-3B-1. Legislative purposes.

1 Every year, in rapidly increasing numbers, the
2 inhabitants of the state of West Virginia and nonresi-
3 dents are enjoying the recreational value of West
4 Virginia rivers and streams. The tourist trade is of vital
5 importance to the state of West Virginia and the
6 services offered by commercial whitewater outfitters
7 and commercial whitewater guides significantly con-
8 tribute to the economy of the state of West Virginia. The
9 Legislature recognizes that there are inherent risks in
10 the recreational activities provided by commercial
11 whitewater outfitters and commercial whitewater
12 guides which should be understood by each participant.
13 It is essentially impossible for commercial whitewater
14 outfitters and commercial whitewater guides to elimi-
15 nate these risks. It is the purpose of this article to define
16 those areas of responsibility and affirmative acts for
17 which commercial whitewater outfitters and commer-
18 cial whitewater guides are liable for loss, damage or
19 injury.

§20-3B-2. Definitions.

1 Unless the context of usage clearly requires otherwise:

2 (a) "Commercial whitewater outfitter" means any
3 person, partnership, corporation or other organization,
4 or any combination thereof, as defined in section twenty-
5 three, article two of this chapter.

6 (b) "Commercial whitewater guide" means any person
7 as defined in section twenty-three, article two of this
8 chapter.

9 (c) "Participant" means any person using the services
10 of a commercial whitewater outfitter or commercial
11 whitewater guide on any river, portions of rivers or
12 waters of the state.

**§20-3B-3. Duties of commercial whitewater outfitters
and commercial whitewater guides.**

1 (a) All commercial whitewater outfitters and com-
2 mercial whitewater guides offering professional services
3 in this state shall provide facilities, equipment and
4 services as advertised or as agreed to by the commercial
5 whitewater outfitter, commercial whitewater guide and
6 the participant. All services, facilities and equipment
7 provided by commercial whitewater outfitters and
8 commercial whitewater guides in this state shall
9 conform to safety and other requirements set forth in
10 article two of this chapter and in the rules promulgated
11 by the commercial whitewater advisory board created
12 by section twenty-three-a, article two of this chapter.

13 (b) In addition to the duties set forth in subsection (a)
14 of this section, all commercial whitewater guides
15 providing services for whitewater expeditions in this
16 state shall, while providing such services, conform to the
17 standard of care expected of members of their profes-
18 sion.

§20-3B-4. Duties of participants.

1 (a) Participants have a duty to act as would a
2 reasonably prudent person when engaging in recrea-
3 tional activities offered by commercial whitewater

4 outfitters and commercial whitewater guides in this
5 state.

6 (b) No participant may:

7 (1) Board upon or embark upon any commercial
8 whitewater expedition when intoxicated or under the
9 influence of nonintoxicating beer, intoxicating beverages
10 or controlled substances; or

11 (2) Fail to advise the trip leader or the trip guide of
12 any known health problems or medical disability and
13 any prescribed medication that may be used in the
14 treatment of such health problems during the course of
15 the commercial whitewater expedition; or

16 (3) Engage in harmful conduct or willfully or negligently
17 engage in any type of conduct which contributes
18 to or causes injury to any person or personal property;
19 or

20 (4) Perform any act which interferes with the safe
21 running and operation of the expedition, including
22 failure to use safety equipment provided by the commercial
23 whitewater outfitter or failure to follow the
24 instructions of the trip leader or trip guide in regard
25 to the safety measures and conduct requested of the
26 participants; or

27 (5) Fail to inform or notify the trip guide or trip
28 leader of any incident or accident involving personal
29 injury or illness experienced during the course of any
30 commercial whitewater expedition. If such injury or
31 illness occurs, the participant shall leave personal
32 identification, including name and address, with the
33 commercial whitewater outfitter's agent or employee.

**§20-3B-5. Liability of commercial whitewater outfitters
and commercial whitewater guides.**

1 It is recognized that some recreational activities
2 conducted by commercial whitewater outfitters and
3 commercial whitewater guides are hazardous to participants
4 regardless of all feasible safety measures which
5 can be taken.

6 (a) No licensed commercial whitewater outfitter or

7 commercial whitewater guide acting in the course of his
8 employment is liable to a participant for damages or
9 injuries to such participant unless such damage or
10 injury was directly caused by failure of the commercial
11 whitewater outfitter or commercial whitewater guide to
12 comply with duties placed on him by article two of this
13 chapter, by the rules of the commercial whitewater
14 advisory board, or by the duties placed on such
15 commercial whitewater outfitter or commercial white-
16 water guide by the provisions of this article.

17 (b) The limitations on liability created by this article
18 apply only to commercial whitewater outfitters licensed
19 under the provisions of article two of this chapter and
20 to commercial whitewater guides who are agents or
21 employees of licensed commercial whitewater outfitters,
22 and only when the commercial whitewater outfitter or
23 commercial whitewater guide is acting within the
24 course of his employment.

CHAPTER 149

(Com. Sub. for H. B. 2448—By Delegates Roop and Overington)

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

AN ACT to amend chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-d, relating to wiretapping and certain electronic surveillance; authorizing the interception of certain oral, electronic and wire communications under specified controlled circumstances; providing certain definitions of terms with respect thereto; establishing certain limits and procedures relating thereto; requiring court orders as a condition precedent to any such interception or installation of any wiretap, pen register, trap and trace device or similar device; designated judges; providing for certain civil immunities with respect thereto; providing for exceptions; and providing

criminal and civil penalties for violation of certain sections.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.

- §62-1D-1. Short title.
- §62-1D-2. Definitions.
- §62-1D-3. Interception of communications generally.
- §62-1D-4. Manufacturers, possession or sale of intercepting device.
- §62-1D-5. Forfeiture of device.
- §62-1D-6. Admissibility of evidence.
- §62-1D-7. Designated judges.
- §62-1D-8. County prosecuting attorney or duly appointed special prosecutor may apply for order authorizing interception.
- §62-1D-9. Lawful disclosure or use of contents of communication.
- §62-1D-10. Pen registers and trap and trace devices.
- §62-1D-11. Ex parte order authorizing interception.
- §62-1D-12. Civil liability; defense to civil or criminal action.
- §62-1D-13. Registration of intercepting devices; serial number.
- §62-1D-14. Breaking and entering, etc., to place or remove equipment.
- §62-1D-15. Training and certification of law-enforcement officers employed in the interception of wire, oral or electronic communications which require a court order.
- §62-1D-16. Severability of provisions.

§62-1D-1. Short title.

- 1 This act shall be known and may be cited as the "West
- 2 Virginia Wiretapping and Electronic Surveillance Act."

§62-1D-2. Definitions.

- 1 As used in this article, unless the context in which
- 2 used clearly requires otherwise, the following terms
- 3 have the meanings indicated:

- 4 (a) "Aggrieved person" means a person who was a
- 5 party to any intercepted wire, oral or electronic
- 6 communication or a person against whom the interception
- 7 was directed.

- 8 (b) "Communications common carrier" means any
- 9 telegraph company or telephone company and any radio
- 10 common carrier.

11 (c) "Contents," when used with respect to any wire,
12 oral or electronic communication, includes any informa-
13 tion concerning the substance, purport or meaning of
14 that communication.

15 (d) "Electronic, mechanical or other device" means
16 any device or apparatus (i) which can be used to
17 intercept a wire, oral or electronic communication or (ii)
18 the design of which render it primarily useful for the
19 surreptitious interception of any such communication.
20 There is excepted from this definition:

21 (1) Any telephone or telegraph instrument, equipment
22 or facility or any component thereof: (a) Furnished to
23 the subscriber or user by a provider of wire or electronic
24 communication service in the ordinary course of its
25 business and being used by the subscriber or user in the
26 ordinary course of its business; or furnished by such
27 subscriber or user for connection to the facilities of such
28 service and used in the ordinary course of its business;
29 or (b) being used by a communications common carrier
30 in the ordinary course of its business or by an
31 investigative or law-enforcement officer in the ordinary
32 course of his duties; or

33 (2) A hearing aid or similar device being used to
34 correct subnormal hearing to not better than normal; or

35 (3) Any device used in a lawful consensual monitoring
36 including, but not limited to, tape recorders, telephone
37 induction coils, answering machines, body transmitters
38 and pen registers.

39 (e) "Intercept" means the aural or other acquisition
40 of the contents of any wire, electronic or oral commu-
41 nication through the use of any electronic, mechanical or
42 other device.

43 (f) "Designated judge" means a circuit court judge
44 designated by the chief justice of the West Virginia
45 supreme court of appeals to hear and rule on applica-
46 tions for the interception of wire, oral or electronic
47 communications.

48 (g) "Investigative or law-enforcement officer" means
49 a member or members of the department of public

50 safety who is or are empowered by law to conduct
51 investigations of or to make arrest for offenses enumer-
52 ated in this chapter.

53 (h) "Oral communication" means any oral communi-
54 cation uttered by a person exhibiting an expectation
55 that such communication is not subject to interception
56 under circumstances justifying such expectation, but
57 such term does not include any electronic
58 communication.

59 (i) "Pen register" means a device which records or
60 decodes electronic or other impulses which identify the
61 numbers dialed or otherwise transmitted on the tele-
62 phone line to which such device is attached, but such
63 term does not include any device used by a provider or
64 customer of a wire or electronic communication service
65 for billing, or recording as an incident to billing, for
66 communications services provided by such provider or
67 any device used by a provider or customer of a wire
68 communication service for cost accounting or other like
69 purposes in the ordinary course of its business.

70 (j) "Person" means any person, individual, partner-
71 ship, association, joint stock company, trust or corpora-
72 tion and includes any police officer, employee or agent
73 of this state or of a political subdivision thereof.

74 (k) "Wire communication" means any aural transfer
75 made in whole or in part through the use of facilities
76 for the transmission of communications by the aid of
77 wire, cable or other like connection between the point
78 of origin and the point of reception (including the use
79 of such connection in a switching station) furnished or
80 operated by any person engaged in providing or
81 operating such facilities for the transmission of inter-
82 state or foreign communications or communications
83 affecting interstate or foreign commerce and such term
84 includes any electronic storage of such communication,
85 but such term does not include the radio portion of a
86 cordless telephone communication that is transmitted
87 between the cordless telephone handset and the base
88 unit.

89 (l) "Electronic communication" means any transfer of

90 signs, signals, writing, images, sounds, data or intelli-
91 gence of any nature transmitted in whole or in part by
92 a wire, radio, electro-magnetic, photoelectronic or
93 photooptical system but does not include:

94 (1) The radio portion of a cordless telephone commun-
95 ication that is transmitted between the cordless tele-
96 phone handset and the base unit;

97 (2) Any wire or oral communication;

98 (3) Any combination made through a tone-only paging
99 device.

100 (m) "User" means any person or entity who or which
101 uses an electronic communication service and is duly
102 authorized by the provider of such service to engage in
103 such use.

104 (n) "Electronic communications system" means any
105 wire, radio, electromagnetic, photooptical or photoelec-
106 tronic facilities for the transmission of electronic
107 communications, and any computer facilities or related
108 electronic equipment for the electronic storage of such
109 communications.

110 (o) "Electronic communication service" means any
111 service which provides to users thereof the ability to
112 send or receive wire or electronic communications.

113 (p) "Aural transfer" means a transfer containing the
114 human voice at any point between and including the
115 point of origin and the point of reception.

116 (q) "Trap and trace device" means a device which
117 captures the incoming electronic or other impulses
118 which identify the originating number of an instrument
119 or device from which a wire or electronic communica-
120 tion was transmitted.

§62-1D-3. Interception of communications generally.

1 (a) Except as otherwise specifically provided in this
2 article, it is unlawful for any person to:

3 (1) Intentionally intercept, attempt to intercept or
4 procure any other person to intercept or attempt to
5 intercept, any wire, oral or electronic communication; or

6 (2) Intentionally disclose or intentionally attempt to
7 disclose to any other person the contents of any wire,
8 oral or electronic communication, knowing or having
9 reason to know that the information was obtained
10 through the interception of a wire, oral or electronic
11 communication in violation of this article; and

12 (3) Intentionally use or disclose or intentionally
13 attempt to use or disclose the contents of any wire, oral
14 or electronic communication or the identity of any party
15 thereto, knowing or having reason to know that such
16 information was obtained through the interception of a
17 wire, oral or electronic communication in violation of
18 this article.

19 (b) Any person who violates subsection (a) of this
20 section is guilty of a felony, and, upon conviction thereof,
21 shall be imprisoned in the penitentiary for not more
22 than five years or fined not more than ten thousand
23 dollars or both fined and imprisoned.

24 (c) It is lawful under this article for an operator of
25 a switchboard or an officer, employee, or provider of any
26 wire or electronic communication service whose facili-
27 ties are used in the transmission of a wire communica-
28 tion to intercept, disclose or use that communication or
29 the identity of any party to that communication in the
30 normal course of his or her employment while engaged
31 in any activity which is a necessary incident to the
32 rendition of his or her service or to the protection of the
33 rights or property of the carrier of the communication.
34 Providers of wire or electronic communication services
35 may not utilize service observing or random monitoring
36 except for mechanical or service quality control checks.

37 (1) Notwithstanding any other law, any provider of
38 wire or electronic communications services, or the
39 directors, officers, employees, agents, landlords or
40 custodians of any such provider, are authorized to
41 provide information, facilities or technical assistance to
42 persons authorized by this article to intercept wire, oral
43 or electronic communication if such provider or its
44 directors, officers, employees, agents, landlord or
45 custodians has been provided with a duly certified copy

46 of a court order directing such assistance and setting
47 forth the period of time during which the provision of
48 the information, facilities, or technical assistance is
49 authorized and specifying the information, facilities or
50 assistance required. No cause of action shall lie in any
51 court against any such provider of wire or electronic
52 communication services, its directors, officers, agents,
53 landlord or custodians for providing information
54 facilities or assistance in accordance with the terms of
55 any such order.

56 (2) It is lawful under this article for a person to
57 intercept a wire, oral or electronic communication
58 where the person is a party to the communication or
59 where one of the parties to the communication has given
60 prior consent to the interception unless the communica-
61 tion is intercepted for the purpose of committing any
62 criminal or tortious act in violation of the constitution
63 or laws of the United States or the constitution or laws
64 of this state.

§62-1D-4. Manufacture, possession or sale of intercepting device.

1 (a) Except as otherwise specifically provided in this
2 article, any person who manufactures, assembles,
3 possesses or sells any electronic, mechanical or other
4 device, knowing or having reason to know that the
5 design of the device renders it primarily useful for the
6 purpose of the illegal interception of wire, oral or
7 electronic communications is guilty of a misdemeanor,
8 and, upon conviction thereof, shall be imprisoned in the
9 county jail for not more than one year or fined not more
10 than five thousand dollars or both so fined and
11 imprisoned.

12 (b) It is lawful under this section for:

13 (1) A provider of wire or electronic communication
14 services or an officer, agent, or employee of, or a person
15 under contract with, any such provider, in the normal
16 course of business of the provider to manufacture,
17 assemble, possess or sell any electronic, mechanical or
18 other device which is designed for or which is primarily
19 useful for the purpose of the illegal interception of wire,
20 oral or electronic communications;

21 (2) A person under contract with the United States,
22 a state, a political subdivision of a state, or the District
23 of Columbia, in the normal course of the activities of the
24 United States, a state, a political subdivision thereof, or
25 the District of Columbia, to manufacture, assemble,
26 possess or sell any electronic, mechanical or other device
27 which is designed for or which is primarily useful for
28 the purpose of the illegal interception of wire, oral or
29 electronic communications;

30 (3) An officer, agent or employee of the United States
31 in the normal course of his or her lawful activities to
32 manufacture, assemble, possess or sell any electronic,
33 mechanical or other device which is designed for or
34 which is primarily useful for the purpose of the illegal
35 interception of wire, oral or electronic communications.
36 However, any sale made under the authority of this
37 subdivision may only be for the purpose of lawfully
38 disposing of obsolete or surplus devices;

39 (4) An officer, agent or employee of a law-enforce-
40 ment agency of this state or a political subdivision of this
41 state in the normal course of his or her lawful activities
42 to assemble or possess any electronic, mechanical or
43 other device which is designed for or which is primarily
44 useful for the purpose of the illegal interception of wire,
45 oral or electronic communications, if the particular
46 officer, agent or employee is specifically authorized by
47 the chief administrator of the law-enforcement agency
48 to assemble or possess the device for a particular law-
49 enforcement purpose and the device is registered in
50 accordance with this article.

§62-1D-5. Forfeiture of device.

1 Any electronic, mechanical or other device used,
2 manufactured, assembled, possessed or sold in violation
3 of either sections three or four of this article may be
4 seized by and forfeited to the department of public
5 safety.

§62-1D-6. Admissibility of evidence.

1 Evidence obtained, directly or indirectly, by the

2 interception of any wire, oral or electronic communica-
3 tion shall be received in evidence only in grand jury
4 proceedings and criminal proceedings in magistrate
5 court and circuit court: *Provided*, That evidence
6 obtained in violation of the provisions of this article shall
7 not be admissible in any proceeding.

§62-1D-7. Designated judges.

1 The chief justice of the supreme court of appeals shall,
2 on an annual basis, designate five active circuit court
3 judges to individually hear and rule upon applications
4 for orders authorizing the interception of wire, oral or
5 electronic communications: *Provided*, That no desig-
6 nated circuit judge may consider any application for
7 such an order if he or she presides as judge of the circuit
8 court of the county wherein the applied for installation
9 would occur or of the county wherein the communica-
10 tions facility, line or device to be monitored is located.

**§62-1D-8. County prosecuting attorney or duly appointed
special prosecutor may apply for order
authorizing interception.**

1 The prosecuting attorney of any county or duly
2 appointed special prosecutor may apply to one of the
3 designated circuit judges referred to in section seven of
4 this article and such judge, in accordance with the
5 provisions of this article, may grant an order authoriz-
6 ing the interception of wire, oral or electronic commun-
7 ications by an officer of the investigative or law-
8 enforcement agency when the prosecuting attorney or
9 special prosecutor has shown reasonable cause to believe
10 the interception would provide evidence of the commis-
11 sion of (i) kidnapping or abduction as defined and
12 prohibited by the provisions of sections fourteen and
13 fourteen-a, article two, chapter sixty-one of this code and
14 including threats to kidnap or demand ransom as
15 defined and prohibited by the provisions of section
16 fourteen-c of said article two, or (ii) of any offense
17 included and prohibited by section eleven, article four,
18 chapter twenty-five of said code, sections eight, nine and
19 ten, article five, chapter sixty-one of said code or section
20 one, article eight, chapter sixty-two of said code to the

21 extent that any of said sections provide for offenses
22 punishable as a felony or (iii) dealing, transferring or
23 trafficking in any controlled substance or substances in
24 the felonious violation of chapter sixty-a of this code or
25 (iv) any aider or abettor to any of the foregoing offenses
26 or any conspiracy to commit any of the foregoing
27 offenses if any aider, abettor or conspirator is a party
28 to the communication to be intercepted.

§62-1D-9. Lawful disclosure or use of contents of communication.

1 (a) Any investigative or law-enforcement officer who
2 has obtained knowledge of the contents of any wire, oral
3 or electronic communication or evidence derived
4 therefrom, may disclose the contents to another inves-
5 tigative or law-enforcement officer of any state or any
6 political subdivision thereof, the United States or any
7 territory, protectorate or possession of the United States,
8 including the District of Columbia, only to the extent
9 that the disclosure is required for the proper perfor-
10 mance of the official duties of the officer making or
11 receiving the disclosure, however, a record of such
12 disclosure and the date, time, method of disclosure and
13 the name of the person or persons to whom disclosure
14 is made shall be forwarded, under seal, to the desig-
15 nated circuit judge who authorized such interception,
16 who shall preserve said record for not less than ten
17 years. In the event the designated judge shall leave
18 office prior to the expiration of this ten-year period, he
19 or she shall transfer possession of said record to another
20 designated judge.

21 (b) Any investigative or law-enforcement officer who
22 has obtained knowledge of the contents of any wire, oral
23 or electronic communication or evidence derived
24 therefrom or any investigative or a law-enforcement
25 officer of any state or any political subdivision thereof,
26 the United States or any territory, protectorate or
27 possession of the United States, including the District
28 of Columbia, who obtains such knowledge by lawful
29 disclosure may use the contents to the extent that the
30 use is appropriate to the proper performance of his or
31 her official duties under the provisions of this article.

32 (c) Any person who has received any information
33 concerning a wire, oral or electronic communication
34 intercepted in accordance with the provisions of this
35 article or evidence derived therefrom, may disclose the
36 contents of that communication or the derivative
37 evidence while giving testimony under oath or affirma-
38 tion in any criminal proceeding held under the authority
39 of this state or of any political subdivision of this state.

40 (d) An otherwise privileged wire, oral or electronic
41 communication intercepted in accordance with, or in
42 violation of, the provisions of this article does not lose
43 its privileged character: *Provided*, That when an
44 investigative or law-enforcement officer, while engaged
45 in intercepting wire, oral or electronic communications
46 in the manner authorized by this article, intercepts a
47 wire, oral or electronic communication and it becomes
48 apparent that the conversation is attorney-client in
49 nature, the investigative or law-enforcement officer
50 shall immediately terminate the monitoring of that
51 conversation: *Provided, however*, That notwithstanding
52 any provision of this article to the contrary, no device
53 designed to intercept wire, oral or electronic commun-
54 ications shall be placed or installed in such a manner
55 as to intercept wire, oral or electronic communications
56 emanating from the place of employment of any
57 attorney at law, licensed to practice law in this state.

58 (e) When an investigative or law-enforcement officer,
59 while engaged in intercepting wire, oral or electronic
60 communications in the manner authorized herein,
61 intercepts wire, oral or electronic communications
62 relating to offenses other than those specified in the
63 order of authorization, the contents thereof, and
64 evidence derived therefrom, may be disclosed or used as
65 provided in subsections (a) and (b) of this section. Such
66 contents and any evidence derived therefrom may be
67 used under subsection (c) of this section when authorized
68 or approved by the designated circuit judge where such
69 judge finds on subsequent application that the contents
70 were otherwise intercepted in accordance with the
71 provisions of this article. The application shall be made

72 as soon as may be practicable after such contents or the
73 evidence derived therefrom is obtained.

74 (f) Any law-enforcement officer of the United States,
75 who has lawfully received any information concerning
76 a wire, oral or electronic communication or evidence
77 lawfully derived therefrom, may disclose the contents of
78 that communication or the derivative evidence while
79 giving testimony under oath or affirmation in any
80 criminal proceeding held under the authority of this
81 state.

82 (g) Any information relating to criminal activities
83 other than those activities for which an order to
84 intercept communications may be granted pursuant to
85 section eight of this article may be disclosed only if such
86 relates to the commission of a felony under the laws of
87 this state, and such information may be offered, if
88 otherwise admissible, as evidence in any such criminal
89 proceeding, but shall not be used for the purpose of
90 obtaining an arrest warrant, or an indictment under
91 laws of this state.

§62-1D-10. Pen registers and trap and trace devices.

1 (a) Except as provided in this section, no person may
2 install or use a pen register or a trap and trace device
3 without first obtaining permission to do so from the
4 designated judge by order granted in the same manner
5 as is required for an order granting permission to
6 intercept any wire, oral or electronic communication.

7 (b) The prohibition of subsection (a) does not apply
8 with respect to the use of a pen register or a trap and
9 trace device by a provider of electronic or wire
10 communication service:

11 (1) Relating to the operation, maintenance, and
12 testing of a wire or electronic communication service or
13 to the protection of the rights or property of such
14 provider, or to the protection of users of that service
15 from abuse of service or unlawful use of service; or

16 (2) To record the fact that a wire or electronic
17 communication was initiated or completed in order to
18 protect such provider or another provider furnishing
19 service toward the completion of the wire communica-

20 tion, or a user of that service, from fraudulent, unlawful
21 or abusive use of service; or

22 (3) With the consent of the user of that service.

23 (c) The prosecuting attorney of any county or any duly
24 appointed special prosecutor may make application for
25 an order or an extension of an order under this section
26 authorizing or approving the installation and use of a
27 pen register or a trap and trace device in writing under
28 oath or affirmation, to the designated judge. Such
29 application shall be made in the same manner as set
30 forth in section ten of this article.

31 (d) Upon application made to the court as provided in
32 subsections (a) and (b) of this section, the designated
33 judge shall enter an ex parte order authorizing the
34 installation and use of a pen register or a trap and trace
35 device if the designated judge finds that the applicant
36 has certified to the court that the information likely to
37 be obtained by such installation and used is relevant to
38 an ongoing criminal investigation.

39 (e) An order issued under this section shall relate with
40 specificity (i) The identity of the person to whom the
41 telephone line to which the pen register or trap and
42 trace device is to be attached is leased or in whose name
43 such telephone is listed, (ii) the identity, if known, of the
44 person who is the subject of the criminal investigation,
45 (iii) the number and, if known, physical location of the
46 telephone line to which the pen register or trap and
47 trace device is to be attached and, in the case of a trap
48 and trace device, the geographic limits of the trap and
49 trace order, and (iv) a statement of the offense to which
50 the information likely to be obtained by the pen register
51 or trap and trace device relates. Such order shall also
52 direct, upon the request of the applicant, the furnishing
53 of information, facilities and technical assistance
54 necessary to accomplish the installation of the pen
55 register or trap and trace device.

56 (f) An order issued under this section shall authorize
57 the installation and use of a pen register or a trap and
58 trace device for a period not to exceed thirty days. One
59 extension of such thirty-day period may be granted by

60 order of the designated judge upon application if such
61 judge makes the same findings as required by subsections (c) and (d) of this section.
62

63 (g) An order authorizing or approving the installation
64 and use of a pen register or a trap and trace device shall
65 direct that (i) the order be sealed until otherwise
66 ordered by the court; and (ii) the person owning or
67 leasing the line to which the pen register or a trap and
68 trace device is attached, or who has been ordered by the
69 court to provide assistance to the applicant, not disclose
70 the existence of the pen register or trap and trace device
71 or the existence of the investigation to the listed
72 subscriber, or to any other person, unless or until
73 otherwise ordered by the court.

74 (h) Upon the request of an officer of a law-enforcement
75 agency authorized to install and use a pen register
76 or a trap and trace device under this section, or an
77 attorney acting in behalf of such agency or officer, a
78 provider of wire or electronic communication service,
79 landlord, custodian or other person shall furnish such
80 investigative or law-enforcement officer forthwith all
81 information, facilities and technical assistance necessary
82 to accomplish the installation of the pen register
83 unobtrusively and with a minimum of interference with
84 the services that the person so ordered by the court
85 accords the party with respect to whom the installation
86 and use is to take place, if such assistance is directed
87 by a court order. Unless otherwise ordered by the
88 designated judge, the results of the trap and trace device
89 shall be furnished to the office of the law-enforcement
90 agency, designated by the court, at reasonable intervals
91 during regular business hours for the duration of the
92 period during which the pen register or trap and trace
93 device is installed as provided in such order.

94 (i) A provider of a wire or electronic communication
95 service, landlord, custodian or other person who
96 furnishes facilities or technical assistance pursuant to
97 this section shall be reasonably compensated for services
98 so rendered and shall be reimbursed for reasonable
99 expenses incurred in providing such facilities and
100 assistance.

101 (j) No cause of action shall lie against any provider
102 of a wire or electronic communication service, its
103 officers, agents or employees for providing information,
104 facilities or assistance provided or rendered in accor-
105 dance with the terms of any court order entered
106 pursuant to this section.

§62-1D-11. Ex parte order authorizing interception.

1 (a) Each application for an order authorizing the
2 interception of a wire, oral or electronic communication
3 shall be made only to a designated judge by petition in
4 writing upon oath or affirmation and shall state the
5 applicant's authority to make the application. Each
6 application shall set forth the following:

7 (1) The identity of the member of the department of
8 public safety making the application, and of the officer
9 authorizing the application, who shall be the superin-
10 tendent of the department of public safety;

11 (2) A full and complete statement of the facts and
12 circumstances relied upon by the applicant, to justify his
13 or her belief that an order should be issued, including
14 (i) details as to the particular offense that has been, is
15 being, or is about to be committed, (ii) a particular
16 description of the nature and location of the facilities
17 from which, or the place where, the communication is
18 to be intercepted, (iii) a particular description of the
19 type of communications sought to be intercepted, and
20 (iv) the identity of the person, if known, committing the
21 offense and whose communications are to be intercepted;

22 (3) A full and complete statement showing that other
23 investigative procedures have been tried and failed and
24 why such procedures reasonably appear to be unlikely
25 to succeed if again attempted or that to do so would be
26 unreasonably dangerous and likely to result in death or
27 injury or the destruction of property;

28 (4) A statement of the period of time for which the
29 interception is required to be maintained. If the nature
30 of the investigation is such that the authorization for
31 interception should not automatically terminate when
32 the described type of communication has been first

33 obtained, a particular description of facts establishing
34 probable cause to believe additional communications of
35 the same type will occur thereafter;

36 (5) A full and complete statement of the facts concern-
37 ing all previous applications known to the person
38 authorizing and making the application, for authoriza-
39 tion to intercept wire, oral or electronic communications
40 involving any of the same persons, facilities or places
41 specified in the application and the action taken by the
42 court with respect to each such application; and

43 (6) Where the application is for the extension of an
44 order, a statement setting forth the results obtained
45 pursuant to such order from the interception or a
46 reasonable explanation of the failure to obtain any such
47 results.

48 (b) The designated judge may require the applicant
49 to furnish additional testimony or documentary evidence
50 in support of the application.

51 (c) Upon the application, the designated judge may
52 enter an ex parte order, as requested or as modified or
53 moulded, authorizing interception of wire, oral or
54 electronic communications, if the judge determines on
55 the basis of the evidence and argument presented by the
56 applicant that:

57 (1) There is probable cause to believe that one or more
58 individuals are committing, has committed, or are about
59 to commit one or more of the particular offenses
60 enumerated in section eight of this article;

61 (2) There is probable cause for belief that particular
62 communications concerning such offense or offenses will
63 be obtained through the interception;

64 (3) Normal investigative procedures have been tried
65 and have failed and reasonably appear to be unlikely to
66 succeed if attempted again, or that to do so would be
67 unreasonably dangerous and likely to result in death or
68 injury or the destruction of property; and

69 (4) There is probable cause to believe that the
70 facilities from which, or the place where, the wire, oral

71 or electronic communications are to be intercepted are
72 being used, or are about to be used, in connection with
73 the commission of the offense, or offenses are leased to,
74 listed in the name of, or commonly used by this person.

75 (d) (1) Each order authorizing the interception of any
76 wire, oral or electronic communication shall specify: (i)
77 the identity of the person, if known, whose communica-
78 tions are to be intercepted, (ii) the nature and location
79 of the communications facilities as to which, or the place
80 where, authority to intercept is granted, (iii) a partic-
81 ular description of the type of communication sought to
82 be intercepted and a statement of the particular offense
83 to which it relates, (iv) the identity of members of the
84 department of public safety authorized to intercept the
85 communications and of the person authorizing the
86 applications and (v) the period of time during which the
87 interception is authorized, including a statement as to
88 whether or not the interception automatically termi-
89 nates when the described communication is first
90 obtained.

91 (2) If an order authorizing the interception of a wire,
92 oral or electronic communication is issued, an additional
93 order may be issued upon petition of the applicant,
94 directing that a provider of wire or electronic commun-
95 ication service, landlord, custodian or other person
96 named in such order, furnish the applicant forthwith all
97 information, facilities and technical assistance necessary
98 to accomplish the interception unobtrusively and with a
99 minimum of interference with the services that the
100 carrier, landlord, custodian or person is according the
101 person whose communications are to be intercepted.
102 Such additional order shall set forth the period of time
103 authorized for providing the information, facilities or
104 technical assistance and shall specify the information,
105 facilities or technical assistance required. In no event
106 may a communications common carrier, its directors,
107 officers, employees and agents, landlords, custodians or
108 other persons be ordered to furnish, install or maintain
109 the electronic, mechanical or other device being used to
110 accomplish the authorized interception, to grant entry

111 into or upon its premises for the purposes of such
112 interception, or to otherwise provide assistance of any
113 nature other than information, facilities or technical
114 assistance. Any provider of wire or electronic commun-
115 ication service, landlord, custodian or other person
116 furnishing the facilities or technical assistance shall be
117 reasonably compensated therefor by the applicant for
118 such services and be reimbursed for the reasonable
119 expenses incurred in providing such facilities or
120 assistance.

121 (e) An order entered pursuant to this section may
122 authorize the interception of any wire, oral or electronic
123 communication for a period of time that is necessary to
124 achieve the objective of the authorization, not to exceed
125 twenty days. Such twenty-day period begins on the day
126 on which the investigative or law-enforcement officer
127 first begins to conduct an interception under the order
128 or ten days after the order is entered, whichever is
129 earliest. Extensions of an order may be granted, but
130 only upon application for an extension made as provided
131 in subsection (a) of this section and upon the court
132 making the findings required by subsection (c) of this
133 section. The period of extension may be no longer than
134 the designated judge deems necessary to achieve the
135 purposes for which it was granted and, in no event, for
136 longer than twenty days. Every order and extension
137 thereof shall contain a provision that the authorization
138 to intercept be executed as soon as practicable, be
139 conducted in such a way as to minimize the interception
140 of communications not otherwise subject to interception
141 under this article and terminate upon attainment of the
142 authorized objective, or in any event within the herein-
143 above described twenty-day period relating to initial
144 applications. In addition, every such order and extension
145 thereof shall contain a provision requiring termination
146 of the interception during any communication to which
147 none of the parties thereto is a person identified as
148 committing the offense in the statement of facts referred
149 to in subsection (a) and there is no reasonable suspicion
150 that any party to such communication is committing
151 such offense: *Provided*, That such provision shall permit
152 such interception up to the point of time that the person

153 authorized to intercept the communication knows or has
154 reason to know the identities of the parties thereto.

155 (f) Whenever an order authorizing the interception of
156 any wire, oral or electronic communication is entered
157 pursuant to this article, the order shall require reports
158 to be made to the judge who issued the order showing
159 what progress has been made toward achievement of the
160 authorized objective and the need for continued inter-
161 ception. Such reports shall be made at the intervals
162 required by such order.

163 (g) The contents of any wire, oral or electronic
164 communication intercepted by any means authorized by
165 this article shall be recorded on tape or wire or other
166 comparable device. The recording of the contents of any
167 wire, oral or electronic communication under this
168 subsection shall be done in such a way or ways as will
169 protect the recording from editing or alterations thereto.
170 Immediately upon the expiration of the period of time
171 during which interception and recording is authorized
172 by the order, or extensions thereof, such recordings shall
173 be made available to the judge issuing such order.
174 Custody of the recordings shall be with the superintend-
175 ent of the department of public safety. Such recordings
176 may not be destroyed except upon an order of the judge
177 to whom application was made and in any event shall
178 be retained for a period of ten years. Duplicate
179 recordings may be made for use or disclosure pursuant
180 to the provisions of subsections (a) and (b), section nine
181 of this article for investigations by law-enforcement
182 agencies.

183 (h) Applications made and orders granted under this
184 article shall be ordered sealed by the court and shall
185 remain in his or her custody. The applications and
186 orders may be disclosed only upon a showing of good
187 cause and may not be destroyed except upon order of
188 such designated judge and in any event shall be kept for
189 not less than ten years. In the event the designated judge
190 shall leave office prior to the expiration of this ten-year
191 period, he or she shall transfer possession of said
192 applications and orders to another designated judge.

193 (i) Any violation of the provisions of this section may
194 be punished as for criminal contempt of court by the
195 designated judge to whom application was made.

196 (j) Within sixty days of the termination of the ordered
197 interception of wire, oral or electronic communications,
198 the superintendent of the department of public safety
199 shall provide the designated judge who issued said order
200 a list containing the names and addresses of all persons
201 whose communications were intercepted. Within a
202 reasonable time, but not later than ninety days after the
203 termination of the period specified in an order permit-
204 ting the interception of any wire, oral or electronic
205 communication or extensions thereof, the designated
206 judge shall cause to be served upon the persons named
207 in the order and such other parties to intercepted
208 communications as the designated judge may determine
209 in his or her discretion that the interest of justice
210 requires written notice of the interception of
211 communications. Such written notice shall include: (i)
212 the fact of the entry of the order, (ii) the date of the entry
213 and the period of authorized interception and (iii) the
214 fact that during the period wire, oral or electronic
215 communications were or were not intercepted: *Provided,*
216 That the service of such notice shall be the sole
217 responsibility of the superintendent of the department
218 of public safety.

219 The designated judge shall, upon motion therefor,
220 make available for inspection by such person or his or
221 her counsel all of the intercepted communications,
222 applications and orders pertaining to that person and
223 the alleged offense for which the interception was
224 requested and granted.

225 (k) The contents of any intercepted wire, oral or
226 electronic communication or evidence derived therefrom
227 may not be received in evidence or otherwise disclosed
228 in any trial, hearing or other proceeding in any court
229 of this state unless each party, not less than twenty days
230 before the trial, hearing or proceeding at which the
231 communication or evidence is to be presented has been
232 furnished with a copy of the written petition or
233 application and order under which the interception was

234 authorized. Where no application or order is required
235 under the provisions of this article, each party, not less
236 than twenty days before any such trial, hearing or
237 proceeding shall be furnished with information concern-
238 ing when, where and how the interception took place
239 and why no application or order was required.

240 (l) Any aggrieved person in any trial, hearing or
241 proceeding in or before any court of this state may move
242 to suppress the contents of any intercepted wire, oral or
243 electronic communication or evidence derived therefrom
244 on the grounds that (i) The communication was unlaw-
245 fully intercepted; (ii) The order of authorization under
246 which it was intercepted is insufficient on its face or was
247 not obtained or not issued in strict compliance with this
248 article; or (iii) The interception was not made in
249 conformity with the order of authorization. Such motion
250 may be made before or during the trial, hearing or
251 proceeding. If the motion is granted, the contents of the
252 intercepted wire, oral or electronic communication or
253 evidence derived therefrom, shall not be admissible in
254 evidence, in any such trial, hearing or proceeding. The
255 designated judge, upon the filing of such motion shall
256 make available to the movant thereof or to his or her
257 counsel the intercepted communication or evidence
258 derived therefrom for inspection.

**§62-1D-12. Civil liability; defense to civil or criminal
action.**

1 (a) Any person whose wire, oral or electronic com-
2 munication is intercepted, disclosed, used or whose
3 identity is disclosed in violation of this article shall have
4 a civil cause of action against any person who so
5 intercepts, discloses, or uses, or procures any other
6 person to intercept, disclose, or use the communications,
7 and shall be entitled to recover from any such person
8 or persons:

9 (1) Actual damages, but not less than one hundred
10 dollars for each day of violation;

11 (2) Punitive damages, if found to be proper; and

12 (3) Reasonable attorney fees and reasonable costs of
13 litigation incurred.

14 (b) A good faith reliance by a provider of electronic
15 or wire communication services on a court order or
16 legislative authorization constitutes a complete defense
17 to any civil or criminal action brought under this article
18 or any other law.

§62-1D-13. Registration of intercepting devices; serial number.

1 (a) Law-enforcement agencies in the state shall
2 register with the department of public safety all
3 electronic, mechanical or other devices whose design
4 renders them primarily useful for the purposes of the
5 surreptitious interception of wire, oral or electronic
6 communications which are owned by them or possessed
7 by or in the control of the agency, their employees or
8 agents. All such devices shall be registered within ten
9 days from the date on which the devices come into the
10 possession or control of the agency, its employees or
11 agents.

12 (b) Such registration shall include the name and
13 address of the agency as well as a detailed description
14 of each device registered, the serial number thereof and
15 such other information as the department may require.

16 (c) A registration number shall be issued for each
17 device registered pursuant to this section, which
18 number shall be permanently affixed or indicated upon
19 such device.

§62-1D-14. Breaking and entering, etc., to place or remove equipment.

1 Any person who trespasses upon any premises with
2 the intent to place, adjust or remove wiretapping or
3 electronic surveillance or eavesdropping equipment
4 without an order from the designated judge authorizing
5 the same is guilty of a felony, and, upon conviction
6 thereof, shall be imprisoned in the penitentiary for not
7 more than five years.

§62-1D-15. Training and certification of law-enforcement officers employed in the interception of wire, oral or electronic communications which require a court order.

1 The superintendent of the department of public safety

2 shall establish a course of training in the legal and
3 technical aspects of wiretapping and electronic surveil-
4 lance, shall establish such regulations as he or she deems
5 necessary and proper for such training program, and
6 shall establish minimum standards for certification and
7 periodic recertification of investigative or law-enforce-
8 ment officers as eligible to conduct wiretapping or
9 electronic surveillance as authorized by this article.

§62-1D-16. Severability of provisions.

1 The various provisions of this article shall be
2 construed as separable and severable, and should any of
3 the provisions or parts thereof be construed or held
4 unconstitutional or for any reason be invalid, the
5 remaining provisions of this article shall not be thereby
6 affected.

CHAPTER 150

(Com. Sub. for H. B. 2833—By Delegates Minard and Fullen)

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

AN ACT to provide a stable method of financing the operation of the Clarksburg-Harrison public library located in Harrison County, West Virginia, as the same was organized under the provisions of article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by creating a separate library board with power to operate such public library to serve the residents of the city of Clarksburg and the county of Harrison; requiring levy at request of boards; providing workers' compensation coverage for library employees; vesting title to library property; and providing for application of future amendments to general law.

Be it enacted by the Legislature of West Virginia:

CLARKSBURG-HARRISON PUBLIC LIBRARY.

§1. Public library board created; joint support by the county board of education, county commission and city of Clarksburg.

- §2. Board of directors; appointment; powers and duties generally; officers, bylaws, rules and regulations.
- §3. A body corporate.
- §4. Title to property.
- §5. Levies for support, maintenance and operation.
- §6. Deposit and disbursement of funds.
- §7. Status of employees.
- §8. Effect of future amendments of general law.

§1. Public library board created; joint support by the county board of education, county commission and city of Clarksburg.

1 There is hereby created a public library board, which
2 shall operate the Clarksburg-Harrison public library,
3 which library shall be supported by the board of
4 education of the county of Harrison, by the county
5 commission of Harrison County, and by the city of
6 Clarksburg, as a joint endeavor of the three governing
7 authorities in the manner hereinafter provided.

§2. Board of directors; appointment, powers and duties generally; officers, bylaws, rules and regulations.

1 There shall be a board of directors consisting of five
2 directors who shall serve without compensation. Before
3 the first day of July, one thousand nine hundred eighty-
4 seven, the board of education of the county of Harrison
5 shall appoint two members of such board of directors,
6 appointing one member for the term of one year and one
7 member for the term of four years. The county commis-
8 sion of Harrison County shall appoint two members to
9 the board of directors, appointing one member for the
10 term of two years and one member for the term of five
11 years. The city of Clarksburg shall appoint one member
12 to the board of directors for the term of three years. The
13 initial terms of these appointees shall commence on the
14 first day of July, one thousand nine hundred eighty-
15 seven. Annually thereafter, on or before the first day of
16 July each year beginning on the first day of July, one
17 thousand nine hundred eighty-eight, the three support-
18 ing entities shall in rotation, appoint one member of the
19 board of directors annually, the first such appointment
20 to be made by the city of Clarksburg, the second such
21 appointment to be made by the board of education of
22 Harrison County, and the third such appointment to be

23 made by the county commission of Harrison County.
24 Each appointment to the board of directors of said
25 library shall be for a term of five years, except that any
26 person appointed to fill a vacancy occurring before the
27 expiration of that term shall serve only for the unex-
28 pired portion thereof. Any member of the board shall
29 be eligible for reappointment and the governing
30 authority which appointed any member to the board
31 may remove that member for cause.

32 There shall be an annual meeting of the board of
33 directors on the third Tuesday in July of each year and
34 a monthly meeting on the day of each month which the
35 board may designate. A special meeting may be called
36 by the president, the secretary, or any two members of
37 the board and such special meeting shall be held only
38 after all of the directors are given notice thereof in
39 writing. At all meetings three members shall constitute
40 a quorum and at each annual meeting of the board of
41 directors it shall elect, from its membership, a presi-
42 dent, a vice president, a secretary, and a treasurer:
43 *Provided*, That the director of the library may be elected
44 as the secretary. The board of directors shall adopt such
45 bylaws, rules and regulations as are necessary for its
46 own guidance and for the administration, supervision
47 and protection of the library and all of the property
48 belonging thereto. The board of directors shall have all
49 of the powers necessary, convenient and advisable for
50 the proper operation, equipment and management of
51 said library; and except as otherwise especially provided
52 in this act, shall have the powers and be subject to the
53 duties which are conferred and imposed, respectively,
54 upon library directors by sections six through eleven,
55 article one, chapter ten of the code of West Virginia, one
56 thousand nine hundred thirty-one, as amended, or by
57 subsequent enactments of the Legislature of West
58 Virginia.

§3. A body corporate.

1 The public library hereby created shall be a corpora-
2 tion. As such it may contract and be contracted with,
3 sue and be sued, plead and be impleaded, and shall have
4 and use a common seal.

§4. Title to property.

1 The title to all property, both real and personal, now
2 devoted to public library purposes by the board of
3 education, the county of Harrison, and the city of
4 Clarksburg in connection with the operation of it by a
5 public library in the city of Clarksburg and the county
6 of Harrison, and any branches of such library, shall, on
7 the first day of July, one thousand nine hundred eighty-
8 seven, vest in the board of directors of the Clarksburg-
9 Harrison public library, hereby created.

§5. Levies for support, maintenance and operation.

1 In order to provide for the support, maintenance, and
2 operations of the Clarksburg-Harrison public library
3 and any branches thereof, the said supporting governing
4 authorities shall, upon written request by the board of
5 directors of the public library, levy annually within the
6 respective taxing districts of the governing authorities,
7 on each one hundred dollars of assessed valuation of the
8 respective classes of property taxable in the area served
9 by it according to the last assessment for state and
10 county purposes, up to the following rates beginning
11 with the fiscal year beginning on the first day of July,
12 one thousand nine hundred eighty-seven:

13 (a) The county commission of Harrison County, for the
14 first year and annually thereafter:

15 Class I, two tenths cents;

16 Class II, four tenths cents; and

17 Class III and IV, eight tenths cents.

18 (b) The board of education of the county of Harrison
19 for the first year and annually thereafter:

20 Class I, two tenths cents;

21 Class II, four tenths cents; and

22 Class III and IV, eight tenths cents.

23 (c) The city of Clarksburg for the first year and
24 annually thereafter:

25 Class I, 1.066 cents;

26 Class II, 2.132 cents; and

27 Class III and IV, 4.264 cents.

28 Each year the board of directors shall request each
29 of the three supporting authorities to levy within the
30 rates prescribed above, at the rates specified by the
31 board, on each one hundred dollars of assessed valuation
32 of property of the same class; and each of the three
33 supporting authorities shall levy at the rates requested
34 by the aforesaid board. Nothing herein shall prevent any
35 of the supporting authorities from contributing to the
36 public library, from time to time, any other general or
37 specific revenues or excess levies: *Provided*, That in the
38 first year the mentioned levy rates are in effect, and in
39 each year thereafter, the public library shall receive
40 annual funding from the county commission of Harrison
41 County in an amount not less than fifty thousand dollars,
42 funding from the board of education of the county of
43 Harrison in an amount not less than fifty thousand
44 dollars, and funding from the city of Clarksburg in an
45 amount not less than one hundred thousand dollars.
46 Such minimum funding from the county commission
47 and the county board of education shall be increased
48 yearly by the amount of increase in revenues produced
49 by the rates set out in this article, until the amounts
50 contributed by the county commission and the county
51 board of education equal the amount then contributed
52 by the city of Clarksburg, and thereafter the three
53 supporting authorities shall contribute to the public
54 library in equal annual amounts of not less than one
55 hundred thousand dollars.

§6. Deposit and disbursement of funds.

1 All money collected or appropriated by the three
2 governing authorities for library purposes shall be
3 deposited on a quarterly basis directed by the board of
4 directors of the Clarksburg-Harrison public library in
5 a bank or savings account specified by the board.

6 All moneys appropriated to the Clarksburg-Harrison
7 public library and all income realized by the operation
8 of the public library from any sources other than the
9 above levies shall be used by the board of directors for

10 the support, maintenance and operation of the said
11 public library and its branches.

12 The board is hereby vested with authority to accum-
13 ulate a surplus from year to year over and above the
14 amount currently required for the proper operation,
15 maintenance and management of the library. Such
16 accumulated surplus may be used if and as needed for
17 support, maintenance and operation of the library, and
18 for capital improvements, additions or extensions to
19 library facilities.

§7. Status of employees.

1 All employees of the Clarksburg-Harrison public
2 library shall be entitled to the benefits of the provisions
3 of chapter twenty-three, and articles seven and ten,
4 chapter five of the code of West Virginia, one thousand
5 nine hundred thirty-one, as amended.

§8. Effect of future amendments of general law.

1 Amendments to article one, chapter ten of the code of
2 West Virginia, one thousand nine hundred thirty-one, as
3 amended, and other general laws shall control this act
4 only to the extent that they do not conflict with the
5 special features hereof, or unless the intent to amend
6 this act is clear and unmistakable.

CHAPTER 151

(H. B. 3182—By Delegates Hale and Roop)

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

AN ACT authorizing employees of the county commission of Mason County to make retroactive contributions to, and receive service credits from, the West Virginia public employees retirement system; county commission of Mason County empowered to participate with employees in making retroactive contributions to the West Virginia public employees retirement system according to law; participating employer and employees to have one year

to make retroactive contributions for service credits; liberal construction.

Be it enacted by the Legislature of West Virginia:

MASON COUNTY COMMISSION EMPLOYEES.

- §1. Employees retroactive contributions authorized to, and service credits received from, the West Virginia public employees retirement fund.
- §2. County commission of Mason County empowered to participate with employees in making retroactive contributions to the West Virginia public employees retirement system.
- §3. Participating employer and employees to have one year to make retroactive contributions for service credits.
- §4. Liberal construction required.

§1. Employees retroactive contributions authorized to, and service credits received from, the West Virginia public employees retirement fund.

1 Employees of the county commission of Mason County
 2 are authorized to make retroactive contributions to the
 3 West Virginia public employees retirement system and
 4 receive service credits therefor for the years prior to
 5 July, one thousand nine hundred seventy-three, in the
 6 manner provided by law.

§2. County commission of Mason County empowered to participate with employees in making retroactive contributions to the West Virginia public employees retirement system.

1 The county commission of Mason County is empo-
 2 wered to participate with employees in making retroac-
 3 tive contributions to the West Virginia public employees
 4 retirement system according to law.

§3. Participating employer and employees to have one year to make retroactive contributions for service credits.

1 The participating employer and employees herein
 2 shall have one year from the effective date hereof to
 3 make retroactive contributions for service credits.

§4. Liberal construction required.

1 Sections one through three herein shall be construed
 2 liberally to effectuate the purpose of establishing

3 entitlement of employees of the county commission of
4 Mason County, West Virginia, to make retroactive
5 payments to, and receive service credits from, the West
6 Virginia public employees retirement system for years
7 prior to July, one thousand nine hundred seventy-three.

CHAPTER 152

(Com.Sub. for S. B. 207—By Senators Whitlow and Parker)

[Passed March 2, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred eighty-five, as last amended and reenacted by chapter one hundred seventy-six, acts of the Legislature, regular session one thousand nine hundred eighty-six; and to amend and reenact section four, chapter one hundred seventy-six, acts of the Legislature, one thousand nine hundred eighty-five, all relating to the New River Parkway Authority; including Mercer County as a member of the authority with Raleigh and Summers Counties; powers and duties generally; officers; bylaws; rules and regulations; compensation; and support, maintenance and operation.

Be it enacted by the Legislature of West Virginia:

That section two, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred eighty-five, as last amended and reenacted by chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred eighty-six; and section four, chapter one hundred seventy-six, acts of the Legislature, regular session, one thousand nine hundred eighty-five, be amended and reenacted, all to read as follows:

NEW RIVER PARKWAY AUTHORITY.

- §2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.
- §4. Support, maintenance and operation.
- §2. **Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.**

1 (a) The authority consists of nine voting members and
2 four to six ex officio nonvoting members.

3 (b) Three voting members shall be appointed by the
4 Mercer County Commission. Three voting members
5 shall be appointed by the Raleigh County Commission.
6 Three voting members shall be appointed by the
7 Summers County Commission. No more than two of the
8 three voting members appointed by a county commis-
9 sion may be members of the same political party, which
10 said members shall not be elected to, appointed to or
11 hold any other public office during their tenure as
12 members of said authority. The regular term of a voting
13 member shall be three years, provided that the terms
14 of the voting members initially appointed by a county
15 commission are as follows: One member shall be
16 appointed for a term of one year, one member shall be
17 appointed for a term of two years and one member shall
18 be appointed for a term of three years. Should a vacancy
19 occur, the person appointed to fill the vacancy shall
20 serve only for the unexpired portion thereof. All voting
21 members are eligible for reappointment. Any voting
22 member may be removed for cause by the appointing
23 county commission.

24 (c) The ex officio nonvoting members are the commis-
25 sioner of highways or his designee, the director of
26 natural resources or his designee, the commissioner of
27 agriculture or his designee, the commissioner of
28 commerce or his designee, and, if they choose to serve,
29 the district engineer of the Huntington District of the
30 United States Army Corps of Engineers or his designee
31 and the superintendent of the New River Gorge Na-
32 tional River or his designee. Any designee serving as a
33 nonvoting member may be removed at the will and
34 pleasure of the officer designating the member.

35 (d) There shall be an annual meeting of the authority
36 on the second Monday in July in each year and a
37 monthly meeting on a day and at such time as the
38 authority may designate in its bylaws. A special meeting
39 may be called by the president, the secretary or any
40 three voting members of the authority and may be held
41 only after all voting and nonvoting members are given

42 notice thereof in writing. Five voting members consti-
43 tute a quorum for all meetings. At each annual meeting
44 of the authority, it shall elect a president, vice president,
45 secretary and treasurer. The authority shall adopt such
46 bylaws, rules and regulations are necessary for its own
47 operation and management. The authority has all but
48 only those powers necessary, incidental, convenient and
49 advisable for the following purposes:

50 (1) The preparation of a plan or plans for the New
51 River Parkway;

52 (2) Advocating actions consistent with that plan or its
53 provisions to or before any governmental entity or any
54 private person or entity; and

55 (3) Otherwise acting in an advisory capacity with
56 regard to any aspect of the New River Parkway upon
57 or without request to any governmental entity or private
58 person or entity. The authority shall not own or hold any
59 real estate or real property and shall not operate or
60 maintain the parkway.

61 (e) Each voting member of the authority may be
62 compensated monthly by the county commission which
63 appointed such member in an amount to be fixed by
64 such county commission.

§4. Support, maintenance and operation.

1 The county commissions of Mercer, Raleigh and
2 Summers Counties may provide for the support, main-
3 tenance and operation of the authority and other related
4 activities under jurisdiction of the authority.

CHAPTER 153

(S. B. 759—By Senator Craigo)

[Passed April 7, 1987; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Putnam County, West Virginia, to meet as a levy body for the purpose of presenting to the voters of the county an election to extend the additional county levy for

ambulance services and equipment in Putnam County from between the seventh and twenty-eighth days of March until the first Thursday in June, one thousand nine hundred eighty-seven.

Be it enacted by the Legislature of West Virginia:

**PUTNAM COUNTY COMMISSION MEETING AS LEVYING BODY
EXTENDED TO CONTINUE ADDITIONAL LEVY FOR AMBU-
LANCE SERVICES AND EQUIPMENT**

§1. Extending time for Putnam County commission to meet as levying body for election to continue additional levy for ambulance services and equipment.

1 Notwithstanding the provisions of article eight,
2 chapter eleven of the code of West Virginia, one
3 thousand nine hundred thirty-one, as amended, to the
4 contrary, the county commission of Putnam County is
5 hereby authorized to extend the time for its meeting as
6 a levying body and certifying its actions to the state tax
7 commissioner from between the seventh and twenty-
8 eighth days of March until the first Thursday in June,
9 one thousand nine hundred eighty-seven, for the purpose
10 of submitting to the voters of Putnam County the
11 extension of the additional county levy for ambulance
12 services and equipment in Putnam County.

CHAPTER 154

(H. B. 2381—By Delegates Hutchinson and Roop)

[Passed February 23, 1987; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter one hundred thirty-six, acts of the Legislature, regular session, one thousand nine hundred eighty-two, as last amended and reenacted by chapter one hundred eighty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-four, relating to the Raleigh County Recreational Authority; members;

appointment; powers and duties generally; officers; bylaws; rules and regulations; and compensation.

Be it enacted by the Legislature of West Virginia:

That section two, chapter one hundred thirty-six, acts of the Legislature, regular session, one thousand nine hundred eighty-two, as last amended and reenacted by chapter one hundred eighty-seven, acts of the Legislature, regular session, one thousand nine hundred eighty-four, be amended and reenacted to read as follows:

RALEIGH COUNTY RECREATION AUTHORITY.

§2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.

1 The authority shall consist of five or seven members
2 at the discretion of the Raleigh County commission to
3 be appointed by the Raleigh County commission. Such
4 members shall be appointed and such authority shall
5 commence operation on or before the first day of July,
6 one thousand nine hundred eighty-four. If the authority
7 consists of seven members, no more than four shall be
8 from the same political party, and if the authority
9 consists of five members then no more than three
10 members shall be from the same political party. One
11 member shall be appointed for a term of five years, one
12 member for a term of four years, one member for a term
13 of three years, one member for a term of two years and
14 one member for a term of one year. The initial terms
15 of office for new appointees shall commence on the first
16 day of July, one thousand nine hundred eighty-four.
17 Each successor member shall be appointed for a term
18 of five years, except that any person appointed to fill a
19 vacancy occurring before the expiration of the term
20 shall serve only for the unexpired portion thereof. Any
21 member of the authority shall be eligible for reappoint-
22 ment and the county commission may remove any
23 member for cause. There shall be an annual meeting of
24 the authority on the second Monday in July in each year
25 and a monthly meeting on the day in each month which
26 the authority may designate in its bylaws. A special
27 meeting may be called by the president, the secretary

28 or any two members of the authority and shall be held
29 only after all of the members are given notice thereof
30 in writing. At all meetings more than fifty percent of
31 the members shall constitute a quorum and at each
32 annual meeting of the authority it shall elect a presi-
33 dent, a vice president, a secretary and a treasurer. The
34 authority shall adopt such bylaws, rules and regulations
35 as are necessary for its own guidance. The authority
36 shall have all the powers necessary, convenient and
37 advisable to effectuate the purposes of this act. In order
38 to keep the peace within the boundaries of the recrea-
39 tional facilities under the authority's supervision and
40 control, the authority is specifically authorized to adopt
41 as its own any rules or regulations promulgated by the
42 West Virginia department of natural resources or the
43 West Virginia department of commerce for the regula-
44 tion of use of state parks, forests and hunting and
45 fishing areas. Upon adoption of any such rules and
46 regulations by the authority, the same shall have the
47 authority of law and any magistrate within Raleigh
48 County shall have jurisdiction of any violation thereof.

49 Each member of the authority shall be compensated
50 monthly by the county in an amount to be fixed by the
51 county commission.

52 Each member presently holding a position on the
53 board of the Raleigh County recreational authority shall
54 keep the same until his term shall normally expire.

CHAPTER 155

(H. B. 2533—By Delegate J. Martin)

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

AN ACT to authorize the county commission of Randolph
County to transfer up to fifteen thousand dollars to the
Randolph County Bicentennial Committee.

Be it enacted by the Legislature of West Virginia:

RANDOLPH COUNTY BICENTENNIAL COMMITTEE.

§1. Legislative findings.

§2. Authorization to donate funds.

§1. **Legislative findings.**

1 The Legislature hereby finds that the Randolph
2 County Bicentennial Committee serves a very useful
3 public purpose and provides that the citizens of
4 Randolph County enjoy a much needed service concern-
5 ing the duties of the Randolph County Bicentennial
6 Committee and that such services are costly to provide.
7 The Legislature also finds that the Randolph County
8 Commission is dedicated to insuring that the Randolph
9 County Bicentennial Committee is adequately funded.

§2. **Authorization to donate funds.**

1 The county commission of Randolph County, by
2 commission action, is empowered to recognize the
3 activities and service of the Randolph County Bicenten-
4 nial Committee as a most worthy public purpose and the
5 county commission is hereby authorized, empowered to
6 donate, give and transfer to the Randolph County
7 Bicentennial Committee fund a sum not to exceed fifteen
8 thousand dollars for the purposes of carrying out its
9 assigned powers and duties and to require the funds to
10 be returned to the county commission should the funds
11 not be properly allocated by the Bicentennial Commit-
12 tee, as may be determined by the Randolph County
13 Commission.

CHAPTER 156

(H. B. 2994—By Delegates Burk and Rogers)

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

AN ACT to provide a stable method of financing the operation of the Parkersburg and Wood County public library and the Vienna public library, both located in Wood County, West Virginia, as the same were organized under the

provisions of article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by creating two separate library boards with power to operate such public libraries to serve the residents of the city of Parkersburg, the city of Vienna and the county of Wood; requiring levy at request of boards; providing workers' compensation coverage for library employees; vesting title to library property; and providing for application of future amendments to general law.

Be it enacted by the Legislature of West Virginia:

PARKERSBURG AND WOOD COUNTY PUBLIC LIBRARY.

- §1. Public library board created; joint support by the county board of education, county commission and city of Parkersburg.
- §2. Board of directors; appointment, powers and duties generally; officers, bylaws, rules and regulations.
- §3. A body corporate.
- §4. Title of property.
- §5. Levies for support, maintenance and operation.
- §6. Deposit and disbursement of funds.
- §7. Status of employees.
- §8. Public library board created; joint support by the county board of education, county commission and city of Vienna.
- §9. Board of directors; appointments, powers and duties generally; officers, bylaws, rules and regulations.
- §10. A body corporate.
- §11. Title to property.
- §12. Levies for support, maintenance and operation.
- §13. Deposit and disbursement of funds.
- §14. Status of employees.
- §15. Effect of future amendments of general law.
- §16. Severability.

§1. Public library board created; joint support by the county board of education, county commission and city of Parkersburg.

- 1 There is hereby created a public library board, which
- 2 shall operate the Parkersburg and Wood County public
- 3 library, which library shall be supported by the board
- 4 of education of the county of Wood, by the county
- 5 commission of Wood County, and by the city of Parkers-
- 6 burg, as a joint endeavor of the three governing
- 7 authorities in the manner hereinafter provided.

§2. Board of directors; appointment, powers and duties generally; officers, bylaws, rules and regulations.

1 There shall be a board of directors consisting of five
2 directors who shall serve without compensation. Before
3 the first day of July, one thousand nine hundred eighty-
4 seven, the board of education of the county of Wood shall
5 appoint two members of such board of directors,
6 appointing one member for the term of one year and one
7 member for the term of four years. The county commis-
8 sion of Wood County shall appoint two members to the
9 board of directors, appointing one member for the term
10 of two years and one member for the term of five years.
11 The city of Parkersburg shall appoint one member to
12 the board of directors for the term of three years. The
13 initial terms of these appointees shall commence on the
14 first day of July, one thousand nine hundred eighty-
15 seven. Annually thereafter, on or before the first day of
16 July each year beginning on the first day of July, one
17 thousand nine hundred eighty-eight, the three support-
18 ing entities shall in rotation, appoint one member of the
19 board of directors annually, the first such appointment
20 to be made by the city of Parkersburg, the second such
21 appointment to be made by the board of education of
22 Wood County, and the third such appointment to be
23 made by the county commission of Wood County. Each
24 appointment to the board of directors of said library
25 shall be for a term of five years, except that any person
26 appointed to fill a vacancy occurring before the
27 expiration of that term shall serve only for the unex-
28 pired portion thereof. Any member of the board shall
29 be eligible for reappointment and the governing
30 authority which appointed any member to the board
31 may remove that member for cause.

32 There shall be an annual meeting of the board of
33 directors on the third Tuesday in July of each year and
34 a monthly meeting on the day of each month which the
35 board may designate. A special meeting may be called
36 by the president, the secretary, or any two members of
37 the board and such special meeting shall be held only
38 after all of the directors are given notice thereof in
39 writing. At all meetings three members shall constitute

40 a quorum and at each annual meeting of the board of
41 directors it shall elect, from its membership, a presi-
42 dent, a vice president, a secretary, and a treasurer:
43 *Provided*, That the director of the library may be elected
44 as the secretary. The board of directors shall adopt such
45 bylaws, rules and regulations as are necessary for its
46 own guidance and for the administration, supervision
47 and protection of the library and all of the property
48 belonging thereto. The board of directors shall have all
49 of the powers necessary, convenient and advisable for
50 the proper operation, equipment and management of
51 said library; and except as otherwise especially provided
52 in this act, shall have the powers and be subject to the
53 duties which are conferred and imposed, respectively,
54 upon library directors by sections six through eleven,
55 article one, chapter ten of the code of West Virginia, one
56 thousand nine hundred thirty-one, as amended, or by
57 subsequent enactments of the Legislature of West
58 Virginia.

§3. A body corporate.

1 The public library hereby created shall be a corpora-
2 tion. As such it may contract and be contracted with,
3 sue and be sued, plead and be impleaded, and shall have
4 and use a common seal.

§4. Title to property.

1 The title to all property, both real and personal, now
2 devoted to public library purposes by the board of
3 education, the county of Wood, and the city of Parkers-
4 burg in connection with the operation of it by a public
5 library in the city of Parkersburg and the county of
6 Wood, and any branches of such library, shall, on the
7 first day of July, one thousand nine hundred eighty-
8 seven, vest in the board of directors of the Parkersburg
9 and Wood County public library, hereby created.

§5. Levies for support, maintenance and operation.

1 In order to provide for the support, maintenance, and
2 operations of the Parkersburg and Wood County public
3 library and any branches thereof, the said supporting
4 governing authorities shall, upon written request by the

5 board of directors of the public library, levy annually
6 within the respective taxing districts of the governing
7 authorities, on each one hundred dollars of assessed
8 valuation of the respective classes of property taxable in
9 the area served by it according to the last assessment
10 for state and county purposes, up to the following
11 amounts beginning with the fiscal year beginning on the
12 first day of July, one thousand nine hundred eighty-
13 seven:

14 (a) The county commission of Wood County, for the
15 first year and annually thereafter not to exceed:

16 Class I, five hundredths cents;

17 Class II, seven hundredths cents; and

18 Class III and IV, one cent.

19 (b) The board of education of the county of Wood for
20 the first year and annually thereafter not to exceed:

21 Class I, five hundredths cents;

22 Class II, nine hundredths cents; and

23 Class III and IV, one and seven hundredths cents.

24 (c) The city of Parkersburg for the first year and
25 annually thereafter not to exceed:

26 Class I, nine hundredths cents;

27 Class II, one and nine hundredths cents; and

28 Class III and IV, two and nine hundredths cents.

29 Each year the board of directors shall request each
30 of the three supporting authorities to levy within the
31 rates prescribed above, at the rates specified by the
32 board, on each one hundred dollars of assessed valuation
33 of property of the same class; and each of the three
34 supporting authorities shall levy at the rates requested
35 by the aforesaid board. In addition, each supporting
36 authority may contribute to the public library any other
37 general or specific revenues or excess levies.

§6. Deposit and disbursement of funds.

1 All money collected or appropriated by the three

2 governing authorities for library purposes shall be
3 deposited at least quarter annually as directed by the
4 board of directors of the Parkersburg and Wood County
5 public library in a bank or savings account specified by
6 the board.

7 All moneys appropriated to the Parkersburg and
8 Wood County public library and all income realized by
9 the operation of the public library from any sources
10 other than the above levies shall be used by the board
11 of directors for the support, maintenance and operation
12 of the said public library and its branches.

13 The board is hereby vested with authority to accum-
14 ulate a surplus from year to year over and above the
15 amount currently required for the proper operation,
16 maintenance and management of the library. Such
17 accumulated surplus may be used if and as needed for
18 support, maintenance and operation of the library, and
19 for capital improvements, additions or extensions to
20 library facilities.

§7. Status of employees.

1 All employees of the Parkersburg and Wood County
2 public library shall be entitled to the benefits of the
3 provisions of chapter twenty-three, and articles seven
4 and ten, chapter five of the code of West Virginia, one
5 thousand nine hundred thirty-one, as amended.

VIENNA PUBLIC LIBRARY.

**§8. Public library board created; joint support by the
county board of education, county commission and
city of Vienna.**

1 There is hereby created a public library board, which
2 shall operate the Vienna public library, which library
3 shall be supported by the board of education of the
4 county of Wood, by the county commission of Wood
5 County and by the city of Vienna, as a joint endeavor
6 of the three governing authorities in the manner
7 hereinafter provided.

**§9. Board of directors; appointments, powers and duties
generally; officers, bylaws, rules and regulations.**

1 There shall be a board of directors consisting of five

2 directors who shall serve without compensation. Before
3 the first day of July, one thousand nine hundred eighty-
4 seven, the board of education of the county of Wood shall
5 appoint one member of such board of directors for the
6 term of three years. The county commission of Wood
7 County shall appoint one member to the board of
8 directors for the term of one year. The city of Vienna
9 shall appoint three members to the board of directors,
10 appointing one member for the term of two years, one
11 member for the term of four years and one member for
12 the term of five years. The initial terms of these
13 appointees shall commence on the first day of July, one
14 thousand nine hundred eighty-seven. Annually thereaf-
15 ter, on or before the first day of July each year
16 beginning on the first day of July, one thousand nine
17 hundred eighty-eight, the three supporting entities shall
18 in rotation, appoint one member of the board of
19 directors annually, the first such appointment to be
20 made by the county commission of Wood County, the
21 second such appointment to be made by the city of
22 Vienna, the third such appointment to be made by the
23 board of education of Wood County, the fourth and fifth
24 such appointments to be made by the city of Vienna.
25 Each appointment to the board of directors of said
26 library shall be for a term of five years, except that any
27 person appointed to fill a vacancy occurring before the
28 expiration of that term shall serve only for the unex-
29 pired portion thereof. Any member of the board shall
30 be eligible for reappointment and the governing
31 authority which appointed any member to the board
32 may remove that member for cause.

33 There shall be an annual meeting of the board of
34 directors on the third Tuesday in July of each year and
35 a monthly meeting on the day of each month which the
36 board may designate. A special meeting may be called
37 by the president, the secretary, or any two members of
38 the board and such special meeting shall be held only
39 after all of the directors are given notice thereof in
40 writing. At all meetings three members shall constitute
41 a quorum and at each annual meeting of the board of
42 directors it shall elect, from its membership, a presi-
43 dent, a vice president, a secretary and a treasurer:

44 *Provided*, That the director of the said library may be
45 elected as the secretary. The board of directors shall
46 adopt such bylaws, rules and regulations as are neces-
47 sary for its own guidance and for the administration,
48 supervision and protection of the library and all of the
49 property belonging thereto. The board of directors shall
50 have all of the powers necessary, convenient and
51 advisable for the proper operation, equipment and
52 management of said library; and except as otherwise
53 especially provided in this act, shall have the powers and
54 be subject to the duties which are conferred and
55 imposed, respectively, upon library directors by sections
56 six through eleven, article one, chapter ten of the code
57 of West Virginia, one thousand nine hundred thirty-one,
58 as amended, or by subsequent enactments of the
59 Legislature of West Virginia.

§10. A body corporate.

1 The public library hereby created shall be a corpora-
2 tion. As such it may contract and be contracted with,
3 sue and be sued, plead and be impleaded, and shall have
4 and use a common seal.

§11. Title to property.

1 The title to all property, both real and personal, now
2 devoted to public library purposes by the city of Vienna
3 in connection with the operation of it by a public library
4 in the city of Vienna, shall, on the first day of July, one
5 thousand nine hundred eighty-seven, vest in the board
6 of directors of the Vienna public library, hereby created.

§12. Levies for support, maintenance and operation.

1 In order to provide for the support, maintenance and
2 operations of the Vienna public library, the said
3 supporting governing authorities shall, upon written
4 request by the board of directors of the public library,
5 levy annually within the respective taxing districts of
6 the governing authorities, on each one hundred dollars
7 of assessed valuation of the respective classes of property
8 taxable in the area served by it according to the last
9 assessment for state and county purposes, up to the
10 following amounts beginning with the fiscal year

11 beginning on the first day of July, one thousand nine
12 hundred eighty-seven:

13 (a) The county commission of Wood County, for the
14 first year and annually thereafter not to exceed:

15 Class I, one hundredths cents;

16 Class II, two hundredths cents; and

17 Class III and IV, two hundredths cents.

18 (b) The board of education of the county of Wood for
19 the first year and annually thereafter not to exceed:

20 Class I, one hundredths cents;

21 Class II, two hundredths cents; and

22 Class III and IV, two hundredths cents.

23 (c) The city of Vienna for the first year and annually
24 thereafter not to exceed:

25 Class I, four hundredths cents;

26 Class II, six hundredths cents; and

27 Class III and IV, nine hundredths cents.

28 Each year the board of directors shall request each
29 of the three supporting authorities to levy within the
30 rates prescribed above, at the rates specified by the
31 board, on each one hundred dollars of assessed valuation
32 of property of the same class; and each of the three
33 supporting authorities shall levy at the rates requested
34 by the aforesaid board. In addition, each supporting
35 authority may contribute to the public library any other
36 general or specific revenues or excess levies.

§13. Deposit and disbursement of funds.

1 All money collected or appropriated by the three
2 governing authorities for library purposes shall be
3 deposited at least quarter annually as directed by the
4 board of directors of the Vienna public library in a bank
5 or savings account specified by the board.

6 All moneys appropriated to the Vienna public library
7 and all income realized by the operation of the public

8 library from any sources other than the above levies
9 shall be used by the board of directors for the support,
10 maintenance and operation of the said public library.

11 The board is hereby vested with authority to accum-
12 ulate a surplus from year to year over and above the
13 amount currently required for the proper operation,
14 maintenance and management of the library. Such
15 accumulated surplus may be used if and as needed for
16 support, maintenance and operation of the library, and
17 for capital improvements, additions or extensions to
18 library facilities.

§14. Status of employees.

1 All employees of the Vienna public library shall be
2 entitled to the benefits of the provisions of chapter
3 twenty-three, and articles seven and ten, chapter five of
4 the code of West Virginia, one thousand nine hundred
5 thirty-one, as amended.

GENERAL.

§15. Effect of future amendments of general law.

1 Amendments to article one, chapter ten of the code of
2 West Virginia, one thousand nine hundred thirty-one, as
3 amended, and other general laws shall control this act
4 only to the extent that they do not conflict with the
5 special features hereof, or unless the intent to amend
6 this act is clear and unmistakable.

§16. Severability.

1 If any provision hereof is held invalid, such invalidity
2 shall not affect other provisions hereof which can be
3 given effect without the invalid provision, and to this
4 end the provisions of this act are declared to be
5 severable.

RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 19

(By Delegate Leary, Mr. Speaker, Mr. Chambers, Delegates Houvouras, Williams, Murensky, Summers, Knight, Jordan, Hartman, Conley, Childers, Stemple, J. Martin and Givens)

[Adopted March 14, 1986.]

Providing for the first and second sessions of the fourth West Virginia Silver Haired Legislature conducted by elected Delegates and Senators who are persons sixty years old or older to provide an opportunity for older West Virginians to learn about the legislative process.

WHEREAS, The members of the West Virginia Legislature have continually evidenced their concern for issues and programs affecting older West Virginians; and

WHEREAS, West Virginia's legislators seek input from the State's older citizens to aid them in making their legislative decisions; and

WHEREAS, It is appropriate for the citizens of the State to understand the legislative process of the state legislature; and

WHEREAS, The members of the previous Silver Haired Legislatures were very impressed with the knowledge they gained about the legislative process; and

WHEREAS, Over twenty states across the nation are conducting successful Silver Haired Legislature sessions, West Virginia being among the first; and

WHEREAS, West Virginia's Silver Haired Legislature is considered one of the finest senior legislatures in the country in terms of replication of the legislative process and the in-depth educational and training experiences it provides; and

WHEREAS, The West Virginia Commission on Aging wishes to again sponsor such a session; and

WHEREAS, A two-year authorization for the Silver Haired

Legislature would be desirous insofar as it would serve to make the Silver Haired Legislature sessions more realistic and would allow for longer range planning and development of this program; therefore, be it

Resolved by the Legislature of West Virginia:

That the first session of the 68th West Virginia Senate and the first session of the 68th West Virginia House of Delegates grant permission to the Silver Haired Legislature to utilize the Senate and House of Delegates Chambers and appropriate hearing and meeting rooms for a Silver Haired Legislature Session and related training activities during 1987 and during 1988; and, be it

Further Resolved, That the Office of the Clerk of the Senate and the Office of the Clerk of the House of Delegates assist the West Virginia Commission on Aging to effectuate the purposes of this resolution.

HOUSE CONCURRENT RESOLUTION 34

(By Mr. Speaker, Mr. Chambers, et al)

[Adopted March 5, 1987.]

Memorializing the President and the Congress to continue and increase support of the Appalachian Trail and the Appalachian Trail Conference, and urging and encouraging the Governor of the State of West Virginia to extend to the Appalachian Trail and the Appalachian Trail Conference all possible state assistance and support.

WHEREAS, The Appalachian Trail is, on the fifteenth day of August, nineteen hundred eighty-seven, celebrating the fiftieth anniversary of its completion as a foottrail extending 2,145 miles from Springer Mountain, Georgia, to Mt. Katahdin, Maine; and

WHEREAS, The Appalachian Trail was designated in 1968 as the first National Scenic Trail by the Congress of the United States; and

WHEREAS, Portions of the Appalachian Trail pass through the State of West Virginia in both Monroe County and

Jefferson County, and the route of that trail passes through Harpers Ferry, West Virginia; and

WHEREAS, The Appalachian Trail has been developed by, and is managed by, the Appalachian Trail Conference, whose headquarters is located in Harpers Ferry, West Virginia; and

WHEREAS, The Appalachian Trail Conference is governed by a volunteer Board of Managers and coordinates the work of thirty-one hiking and outing clubs throughout the eastern United States who maintain portions of the Appalachian Trail, including the Kanawha Trail Club and the West Virginia Scenic Trails Association, both West Virginia organizations; and

WHEREAS, The Appalachian Trail Conference maintains its headquarters in Harpers Ferry as a visitor center for thousands of visitors each year, publishes a series of guide-books and maps for the Appalachian Trail, and responds to many thousands of requests for information from persons throughout West Virginia, the United States, and the entire world, thereby providing a valuable public service for this State and the Nation; and

WHEREAS, The Appalachian Trail Conference will ultimately be responsible for management of more than one hundred thousand acres of public land in the Appalachian Trail corridor through an agreement with the National Park Service, a unique example of private, nonprofit management of public lands on such a large scale; and

WHEREAS, The Appalachian Trail Conference is, as a nonprofit organization with great responsibility for development and management of the Appalachian Trail, deserving of support from both the federal and state governments; and

WHEREAS, The Appalachian Trail Conference is a valuable asset to the State of West Virginia both in its development and management of the Appalachian Trail as well as in its maintenance of its headquarters within West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That, on this, the fiftieth anniversary of the Appalachian Trail, the appreciation and congratulations of the Legislature are hereby extended to the Appalachian Trail Conference, its

Board of Managers, and the clubs and persons who have labored to develop, maintain and manage the Appalachian Trail during the past half century of that notable and public-spirited endeavor; and, be it

Further Resolved, That the President of the United States and the Congress of the United States are requested to continue support of the Appalachian Trail and the Appalachian Trail Conference; and, be it

Further Resolved, That the Governor of the State of West Virginia is hereby urged and encouraged to extend to the Appalachian Trail and the Appalachian Trail Conference assistance and support as might be possible through the agencies of the State of West Virginia; and, be it

Further Resolved, That copies of this resolution be transmitted to the President of the United States, the presiding officer of each House of Congress and the members thereof from the State of West Virginia, the Governor of West Virginia, and the Appalachian Trail Conference.

COMMITTEE SUBSTITUTE
FOR
HOUSE JOINT RESOLUTION 29
(By Delegates Sattes and Rogers)

[Adopted March 14, 1987.]

Proposing an amendment to the Constitution of the State of West Virginia, amending article ten thereof by adding thereto a new section, designated section one-d, relating to the support of the free school system throughout the State; imposing a uniform excess levy statewide of ad valorem taxes; providing for the rate of such excess levy; providing that such excess levy is to replace certain local excess levies for schools in the several districts of the State and to replace all such levies as each expires; providing for the expenditure of the proceeds of such levy by local school districts; continuing library support from certain excess levies; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at a special election to be held on Saturday, the fifth day of March, in the year one thousand nine hundred eighty-eight, which proposed amendment is that article ten thereof be amended by adding thereto a new section, designated section one-d, to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§1d. Uniform School Funding Amendment.

1 Any other provision of this Constitution to the
 2 contrary notwithstanding, in addition to the aggregate
 3 of taxes authorized by section one of this article, and in
 4 lieu of excess levies for free schools authorized by
 5 sections one-b and ten, article X of this Constitution to
 6 the extent that such levies are at a rate less than or
 7 equal to that imposed by this section and upon the
 8 expiration of such levies in effect at a greater rate than
 9 that imposed by this section, there is hereby imposed a
 10 uniform levy on the several classes of property for the
 11 support of public schools beginning on the first day of
 12 July, one thousand nine hundred eighty-eight, in order
 13 to assist the State in meeting its obligation to provide
 14 a thorough and efficient system of free schools and
 15 equality of substantive educational opportunity for all
 16 its citizens. Notwithstanding the aggregate of taxes
 17 assessed in any one year by the different levying bodies,
 18 the rate of the uniform levy assessed each year upon the
 19 classes of property as defined by general law shall be
 20 in amounts as follows:

21	Class I	20.66 cents
22	Class II	41.31 cents
23	Class III	82.62 cents
24	Class IV	82.62 cents

25 Such uniform levy shall replace any local excess levy
 26 for schools in effect on the first day of July, one thousand
 27 nine hundred eighty-eight, and any local excess levy
 28 approved prior to such date, to the extent that such local

29 levy is at a rate less than or equal to that imposed by
30 this section, and shall replace each local excess levy in
31 effect at a greater rate upon the expiration of such local
32 levy, and is in lieu of the exercise of the power to lay
33 such levies by the local school districts as heretofore
34 provided.

35 The revenue from such uniform levy shall be retained
36 by each county and shall first be used to provide funds
37 to each local school district for which a levy has been
38 replaced by this amendment, until such local levy would
39 have expired, so that such local school district will
40 continue to have the same funds available for the same
41 purposes as provided under such local levy; and then for
42 general current expenses or any other expenses asso-
43 ciated with the operation of the public schools in each
44 local school district on the basis of the relative needs of
45 each of the local school districts as each shall determine.
46 At such time as each of the local levies that are at a
47 greater rate than that imposed herein expire and are
48 thereby replaced by the uniform levy, the revenue from
49 the uniform levy shall be retained by the county and
50 shall be used for general current expenses or any other
51 expenses associated with the operation of the public
52 schools of the local school district on the basis of the
53 relative needs of each local school district as it shall
54 determine: *Provided*, That as to any county board
55 required to contribute to the support, maintenance or
56 operation of public libraries from revenues from excess
57 levies, which mandate and excess levy were in effect
58 prior to the effective date of this section, shall continue
59 to make available from the uniform levy such amounts
60 as would be available from the local excess levy of the
61 county board, without regard to the expiration date of
62 the local excess levy, upon written request therefor by
63 the board of directors of the public library of the county.
64

65 *Resolved further*, That in accordance with the provi-
66 sions of article eleven, chapter three of the code of West
67 Virginia, one thousand nine hundred thirty-one, as
68 amended, such proposed amendment is hereby num-
69 bered "Amendment No. 1" and designated as the

70 "Uniform School Funding Amendment" and the purpose
71 of the proposed amendment is summarized as follows:
72 "To impose a uniform excess levy for school purposes
73 beginning on the first day of July, one thousand nine
74 hundred eighty-eight; to thereby equalize excess levy
75 rates among the various counties; and to provide funds
76 to local school districts."

HOUSE RESOLUTION 4

(By Delegate Murensky)

[Adopted January 14, 1987.]

Creating a Select Committee on Economic Policy.

Resolved by the House of Delegates:

That for the life of the 68th Legislature there is hereby created a Select Committee on Economic Policy of the House of Delegates, consisting of twelve members, said members to be appointed by the Speaker. Notwithstanding the provisions of any House rule to the contrary, this committee shall have jurisdiction of legislative proposals affecting or defining economic policy and economic development of the State as the Speaker may deem appropriate.

The rules of the House of Delegates governing Standing Committees shall govern the actions and proceedings of this committee insofar as applicable.

HOUSE RESOLUTION 9

(By Delegates Love, Bradley, Kelly and Givens)

[Adopted March 12, 1987.]

Requesting that the Weirton-Steubenville Bridge be hereafter named and referred to as the Veteran's Bridge.

WHEREAS, This State is proud of those who have served with honor in the armed forces of the United States; and

WHEREAS, There should be a suitable memorial to those military veterans of this State and other States; and

WHEREAS, There is presently under construction a bridge between Weirton, West Virginia, and Steubenville, Ohio, linking the States of West Virginia and Ohio; and

WHEREAS, The aforementioned structure will serve admirably as a memorial honoring veterans; therefore, be it

Resolved by the House of Delegates:

That the bridge presently being constructed from Weirton, West Virginia, to Steubenville, Ohio, be hereafter named and known as the Veteran's Bridge, as an honor and memorial to military veterans everywhere; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to forward a copy of this resolution to the Mayor and city council of Weirton, to the Commissioner of Highways, to the President of these United States, to the Congressional Delegation from this State, to the Governor of this State, and to the national headquarters of the Veterans of Foreign Wars and the American Legion.

HOUSE RESOLUTION 10

(By Mr. Speaker, Mr. Chambers, and Delegate Knight)

[Adopted January 29, 1987.]

Creating a Select Committee on Governmental Ethics.

Resolved by the House of Delegates:

That for the life of the 68th Legislature there is hereby created a Select Committee on Governmental Ethics of the House of Delegates, consisting of fifteen members, said members to be appointed by the Speaker. Notwithstanding the provisions of any House rule to the contrary, this committee shall have jurisdiction of legislative proposals affecting or defining governmental ethics and conflicts of interest for employers and officials of the State and its political subdivisions as the Speaker may deem appropriate.

The rules of the House of Delegates governing Standing Committees shall govern the actions and proceedings of this committee insofar as applicable.

SENATE CONCURRENT RESOLUTION 1

(By Senator Boettner)

[Adopted January 14, 1987.]

Adopting Joint Rules for the Senate and House of Delegates.

Resolved by the Legislature of West Virginia:

That the Joint Rules of the Senate and House of Delegates governing the sixty-seventh Legislature are hereby adopted to govern the proceedings of the sixty-eighth Legislature, subject to subsequent amendment.

SENATE CONCURRENT RESOLUTION 10

(By Senators Kaufman and Harman)

[Adopted March 11, 1987.]

Requesting members of the West Virginia congressional delegation to study and initiate legislation to establish a national park within the State of West Virginia.

WHEREAS, The State of West Virginia is blessed with a variety of unique and picturesque natural areas, such as Dolly Sods and Otter Creek Wilderness Areas and Cranberry Back Country; and

WHEREAS, Many of these areas are preserved either entirely, or almost entirely within federal ownership; and

WHEREAS, Classification of one or more of these unique areas in national park status would be the most straightforward expression of the intent of the people of West Virginia to preserve the natural beauty of the State; and

WHEREAS, Many of the communities surrounding these unique areas are economically disadvantaged and would benefit greatly from increased employment and income in the tourism and recreation industries if the areas were dedicated to national park status; therefore, be it

Resolved by the Legislature of West Virginia:

That members of the State's congressional delegation are hereby requested to review, examine and study the feasibility of establishing a national park within the State of West Virginia; and, be it

Further Resolved, That if the members of the congressional delegation determine there is an interest and desire for a national park to be established within the State, that they sponsor and support legislation necessary to effectuate this recommendation; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to members of the congressional delegation.

SENATE CONCURRENT RESOLUTION 38
(Originating in the Senate Committee on Rules)

[Adopted March 14, 1987.]

Providing for the extension of the regular session of the sixty-eighth Legislature of West Virginia.

Resolved by the Legislature of West Virginia two thirds of the members elected to each house agreeing thereto:

That the regular session of the sixty-eighth Legislature is hereby extended pursuant to Section 22, Article VI of the Constitution of the State of West Virginia, for consideration of the budget, budget bills, supplementary appropriation bills, salary bills, revenue producing bills, sunset bills and bills in conference. Further, for reconsideration of any bills vetoed or disapproved by the Governor and any budget bill or supplementary appropriation bill vetoed, disapproved, reduced or increased by the Governor as to any item or part or as to the entire bill; and, be it

Further Resolved, That when adjournment is taken by the two houses of the Legislature at the close of their respective sessions on the 14th day of March, 1987, such adjournment shall be until 6 p.m. on the 16th day of March, 1987, pursuant to Section 23, Article VI of the Constitution of the State of West Virginia, unless the Legislature is called to reconvene prior thereto by a majority vote of the Committee on Rules of both houses, in which event such adjournment shall be until the date and time of reconvening specified by said committees. The Legislature hereby expressly authorizes said Committees on Rules, to which this authority is hereby expressly delegated, to call the Legislature to reconvene this extension of the

regular session prior to 6 p.m. on the 16th day of March, 1987, as herein provided.

SENATE RESOLUTION 6

(By Senator Burdette)

[Adopted January 14, 1987.]

Creating a Select Committee on Quality Education.

Resolved by the Senate:

That for a period of time not to exceed the term of the sixty-eighth Legislature there is hereby created a Senate Select Committee on Quality Education. This committee shall consist of five members of the Senate and eight citizen members as appointed by the President who may authorize payment of members' and citizens' expenses. Notwithstanding the provisions of any Senate rule to the contrary, this committee shall have jurisdiction of legislative proposals affecting the education in the State of West Virginia as the President may deem appropriate: *Provided*, That the rules of the Senate governing Standing Committees shall govern the actions and proceedings of this committee insofar as applicable.

SENATE RESOLUTION 15

(By Senators Kaufman and Holliday)

[Adopted February 23, 1987.]

Requesting the Capitol Building Commission to study ways to improve the accessibility of the State Capitol to the handicapped.

WHEREAS, The State Capitol is the seat of government of all West Virginians and must be accessible to all West Virginians to provide them their full rights as citizens to meet with their elected representatives, to do business with the state agencies located in the Capitol, to visit and admire the beautiful Capitol Building, and to observe the debates and proceedings of the State Legislature; and

WHEREAS, The Capitol is filled at every turn with steps which constitute barriers to the handicapped and with antiquated elevators which unpredictably and without

warning slam shut, endangering those in wheelchairs and on crutches; and

WHEREAS, Making public buildings accessible to the handicapped is both a legal obligation and a moral imperative; therefore, be it

Resolved by the Senate:

That the Capitol Building Commission is hereby requested to study ways to improve the accessibility of the State Capitol Building to the handicapped, and to consider the comments of organizations representing the handicapped when defining the nature and scope of the problem and formulating possible alternative solutions, and shall present its findings and recommendations to the Governor and to the Legislature not later than the first day of January, one thousand nine hundred eighty-eight.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 1986

CHAPTER 1

(H. B. 208—By Mr. Speaker, Mr. Albright, and Delegate Swann,
by request of the Executive)

[Passed July 20, 1986; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and increasing the amounts appropriated and specified as available for payment of compensation awards to victims of crimes from the crime victim compensation fund, for the fiscal year ending June thirtieth, one thousand nine hundred eighty-seven, as set forth in "Sec. 5. Awards for claims against the state." section, supplementing chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred eighty-six, known as the budget bill and as the same was further supplemented by Enrolled House Bill No. 2185 of such session.

Be it enacted by the Legislature of West Virginia:

That "Sec. 5. Awards for claims against the state." section of chapter twenty-nine, acts of the Legislature, regular session, one thousand hundred eighty-six, known as the budget bill, as supplemented by Enrolled House Bill No. 2185 enacted at such session, be hereby further supplemented, amended and additional amounts appropriated from the crime victim compensation fund as herein specified in such section for payment of compensation awards made in general law enacted

at the second extraordinary session of the Legislature, one thousand nine hundred eighty-six, and with such section to thereafter read as follows.

TITLE 2. APPROPRIATIONS.

1 **Sec. 5. Awards for claims against the state. —**
2 There are hereby appropriated, for the remainder of the
3 fiscal year 1985-86 and to remain in effect until June
4 30, 1987, from the fund as designated, in the amounts
5 as specified and for the claimants as named in enrolled
6 house bill 1871, acts of the Legislature, regular session,
7 1986, crime victims compensation fund, moneys in the
8 amount of \$529,478.25 for payment of compensation
9 awards to victims of crimes claims against the state.
10 Additionally, there is hereby appropriated for the fiscal
11 year ending June 30, 1987, from the crime victims
12 compensation fund, moneys in the amount of
13 \$1,232,792.67 for payment of the compensation awards
14 to victims of crime as made, named and specified in the
15 enrolled bill enacted at the second extraordinary session
16 of the Legislature, 1986, which established compensa-
17 tory awards as a moral obligation of the state.

18 There are hereby appropriated for the remainder of
19 the fiscal year 1985-86 and to remain in effect until June
20 30, 1987, from the funds as designated, in the amounts
21 as specified, and for the claimants as named in enrolled
22 house bill no. 1960 and no. 1961, acts, Legislature,
23 regular session, 1986, total general revenue funds of
24 \$632,699.04, state road funds of \$584,286.74, special
25 revenue funds of \$18,666.94 and federal funds of
26 \$13,136.56 for payments of claims against the state.

27 The purpose of this supplementary appropriation bill
28 is to appropriate and make available for payment
29 additional moneys from the crime victims compensation
30 fund for payment of the additional crime victims
31 compensation awards and moral obligations as found
32 and determined by the Legislature at the second
33 extraordinary session, Legislature, 1986, and in the
34 enrolled bill enacted at such time, for which this
35 supplementary appropriation bill provides funding.

36 These additional moneys, appropriated from the crime
37 victims compensation fund, become available for
38 expenditure and payment upon the effective date of this
39 bill and within the fiscal year ending June 30, 1987.

CHAPTER 2

(H. B. 210—By Delegate Chambers)

[Passed July 23, 1986; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four; to amend and reenact section three, article three of said chapter forty-eight-a; to amend and reenact sections one, two, three, four, five, six, seven, eight and nine, article four of said chapter forty-eight-a; to further amend said article four by adding thereto three new sections, designated sections ten, eleven and twelve; and to amend and reenact section three, article five of said chapter forty-eight-a, relating generally to establishing expedited processes to improve the establishment of, compliance with, and enforcement of child support obligations and the resolution of related domestic relations matters; providing for the severability of the provisions of said chapter; prescribing the duties of the children's advocate; providing for the appointment of family law masters by the governor; fixing the salary of the master and his or her secretary-clerk and providing for the appointment of such secretary-clerk; providing for the geographic distribution of the offices of the family law master; describing the actions to be heard by the family law master; establishing hearing procedures; providing for the entry of default orders and temporary orders; authorizing the master to file recommended decisions; providing for orders to be entered by the circuit court with the exception of certain pendente lite orders; providing for review of a master's action or a master's recommended decision; describing the procedure for review by the

circuit court, form of petition for review, brief in opposition and review; describing when review should occur and the matters to be considered upon review; setting forth legislative findings and intent; providing for the termination of the masters system by operation of law; providing for the withholding of income of amounts payable as support; providing for a source of income to be liable to an obligee for any amount which the source of income fails to withhold; making it a misdemeanor for source of income to discharge, refuse to employ, or take disciplinary action against an obligor and setting forth the penalty therefor.

Be it enacted by the Legislature of West Virginia:

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

Article

1. General Provisions.
3. Children's Advocate.
4. Proceedings Before a Master.
5. Remedies for the Enforcement of Support Obligations and Visitation.

ARTICLE 1. GENERAL PROVISIONS.

§48A-1-4. Severability.

- 1 The provisions of every section or article of this
- 2 chapter, whether enacted before or subsequent to the
- 3 effective date of this section, shall be severable so that
- 4 if any provision of any such section or article is held
- 5 unconstitutional or void, the remaining provisions of
- 6 such section or article shall remain valid, unless the
- 7 court finds the valid provisions are so essentially and
- 8 inseparably connected with, and so dependent upon, the

9 unconstitutional or void provision that the court cannot
10 presume the Legislature would have enacted the
11 remaining valid provisions without the unconstitutional
12 or void one, or unless the court finds the remaining valid
13 provisions, standing alone, are incomplete and are
14 incapable of being executed in accordance with the
15 legislative intent. The provisions of this section shall be
16 fully applicable to all future amendments or additions
17 to this chapter, with like effect as if the provisions of
18 this section were set forth in extenso in every such
19 amendment or addition and were reenacted as a part
20 thereof, unless such amendment or addition contains its
21 own severability clause.

ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-3. Duties of the children's advocate.

1 (a) The children's advocate shall make available to the
2 public an informational pamphlet, designed in consul-
3 tation with the director. The informational pamphlet
4 shall explain the procedures of the court and the
5 children's advocate; the duties of the children's advocate;
6 the rights and responsibilities of the parties; and the
7 availability of human services in the community. The
8 informational pamphlet shall be provided as soon as
9 possible after the filing of a complaint or other initiating
10 pleading. Upon request, a party to a domestic relations
11 proceeding shall receive an oral explanation of the
12 informational pamphlet from the office of the children's
13 advocate.

14 (b) At any time while a domestic relations matter is
15 pending, the circuit court or the family law master may
16 direct the children's advocate to investigate all relevant
17 facts and make a written report and recommendation
18 to the parties and to the court regarding child support,
19 spousal support or child custody. The investigation may
20 include reports and evaluations by outside persons or
21 agencies if requested by the parties or the court, and
22 shall include documentation of alleged facts, if practi-
23 cable. The child support formula promulgated pursuant
24 to the provisions of section eight, article two of this
25 chapter shall be used as a guideline in recommending

26 child support: *Provided*, That whenever the recom-
27 mended child support falls outside the guidelines, the
28 children's advocate shall file written reviewable reasons
29 setting forth findings of fact sufficient to justify the
30 recommendation.

31 (c) The children's advocate shall act to establish the
32 paternity of every child born out of wedlock for whom
33 paternity has not been established, when such child's
34 primary caretaker is an applicant for or recipient of aid
35 to families with dependent children, and when such
36 primary caretaker has assigned to the department of
37 human services any rights to support for the child which
38 might be forthcoming from the putative father: *Pro-*
39 *vided*, That if the children's advocate is informed by the
40 commissioner of the department of human services or
41 his or her authorized employee that it has been
42 determined that it is against the best interest of the
43 child to establish paternity, the children's advocate shall
44 decline to so act. The children's advocate, upon the
45 request of any primary caretaker of a child born out of
46 wedlock, regardless of whether such primary caretaker
47 is an applicant or recipient of aid to families with
48 dependent children, shall undertake to establish the
49 paternity of such child.

50 (d) The children's advocate shall undertake to secure
51 support for any individual who is receiving aid to
52 families with dependent children when such individual
53 has assigned to the department of human services any
54 rights to support from any other person such individual
55 may have: *Provided*, That if the children's advocate is
56 informed by the commissioner of the department of
57 human services or his or her authorized employee that
58 it has been determined that it is against the best
59 interests of a child to secure support on the child's
60 behalf, the children's advocate shall decline to so act.
61 The children's advocate, upon the request of any
62 individual, regardless of whether such individual is an
63 applicant or recipient of aid to families with dependent
64 children, shall undertake to secure support for the
65 individual. If circumstances require, the children's
66 advocate shall utilize the provisions of article seven of

67 this chapter and any other reciprocal arrangements
68 which may be adopted with other states for the
69 establishment and enforcement of support obligations,
70 and if such arrangements and other means have proven
71 ineffective, the children's advocate may utilize the
72 federal courts to obtain and enforce court orders for
73 support.

74 (e) The children's advocate shall pursue the enforce-
75 ment of support orders through the withholding from
76 income of amounts payable as support:

77 (1) Without the necessity of an application from the
78 obligee in the case of a support obligation owed to an
79 obligee to whom services are already being provided
80 under the provisions of this chapter; and

81 (2) On the basis of an application for services in the
82 case of any other support obligation arising from a
83 support order entered by a court of competent
84 jurisdiction.

85 (f) The children's advocate may decline to commence
86 an action to obtain an order of support under the
87 provisions of section one, article five of this chapter if
88 an action for divorce, annulment, or separate mainte-
89 nance is pending, or the filing of such action is
90 imminent, and such action will determine the issue of
91 support for the child: *Provided*, That such action shall
92 be deemed to be imminent if it is proposed by the
93 obligee to be commenced within the twenty-eight days
94 next following a decision by the children's advocate that
95 an action should properly be brought to obtain an order
96 for support.

97 (g) If the child advocate office, through the children's
98 advocate, shall undertake paternity determination
99 services, child support collection, or support collection
100 services for a spouse or former spouse upon the written
101 request of an individual who is not an applicant or
102 recipient of assistance from the department of human
103 services, the office may impose an application fee for
104 furnishing such services. Such application fee shall be
105 in a reasonable amount, not to exceed twenty-five
106 dollars, as determined by the director: *Provided*, That

107 the director may fix such amount at a higher or lower
108 rate which is uniform for this state and all other states
109 if the secretary of the federal department of health and
110 human services determines that a uniform rate is
111 appropriate for any fiscal year to reflect increases or
112 decreases in administrative costs. Any cost in excess of
113 the application fee so imposed may be collected from the
114 obligor who owes the child or spousal support obligation
115 involved.

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

- §48A-4-1. Appointment of family law masters; term of office; vacancy; qualifications; removal; compensation and expenses; location of offices; matters to be heard by master; fees for hearings; notice of master's hearing; content of notice; determination of issues by consent; hearing.
- §48A-4-2. Hearing procedures.
- §48A-4-3. Default orders; temporary orders.
- §48A-4-4. Recommended decisions.
- §48A-4-5. Orders to be entered by circuit court exclusively.
- §48A-4-6. Circuit court review of master's action or recommended decision.
- §48A-4-7. Procedure for review by circuit court.
- §48A-4-8. Form of petition for review.
- §48A-4-9. Brief in opposition to a petition for review.
- §48A-4-10. Circuit court review of master's recommended decision.
- §48A-4-11. Legislative findings and intent.
- §48A-4-12. Termination of family law masters system by law.

§48A-4-1. Appointment of family law masters; term of office; vacancy; qualifications; removal; compensation and expenses; location of offices; matters to be heard by master; fees for hearings; notice of master's hearing; content of notice; determination of issues by consent; hearing.

- 1 (a) On or before the fifteenth day of September, one
2 thousand nine hundred eighty-six, the governor shall
3 appoint family law masters in such numbers and to
4 serve such areas of the state as provided for under the
5 provisions of this article, and such initial appointments
6 of individuals as family law masters shall be for a term
7 ending on the thirtieth day of June, one thousand nine
8 hundred ninety. Thereafter, the length of the term of the
9 office of family law master shall be four years, with
10 terms commencing on the first day of July, one thousand

11 nine hundred ninety, and on a like date in every fourth
12 year thereafter, and ending on the thirtieth day of June,
13 one thousand nine hundred ninety-four, and on a like
14 date in every fourth year thereafter. Upon the expira-
15 tion of his or her term, a family law master may
16 continue to perform the duties of the office until his or
17 her successor is appointed, or for sixty days after the
18 date of the expiration of the master's term, whichever
19 is earlier. If from any cause a vacancy shall occur in the
20 office of family law master, the governor shall, within
21 thirty days after such vacancy occurs, fill such vacancy
22 by appointment for the unexpired term: *Provided*, That
23 if the remaining portion of the unexpired term to be
24 filled is less than one year, the governor may, in his
25 discretion, simultaneously appoint an individual to the
26 unexpired term and to the next succeeding full four-
27 year term. An individual may be reappointed to
28 succeeding terms as a family law master to serve in the
29 same or a different area of the state.

30 (b) No individual may be appointed to serve as a
31 family law master unless he or she is a member in good
32 standing of the West Virginia State Bar.

33 (c) Removal of a master during the term for which he
34 or she is appointed shall be only for incompetency,
35 misconduct, neglect of duty, or physical or mental
36 disability.

37 (d) A family law master may not engage in any other
38 business, occupation, or employment inconsistent with
39 the expeditious, proper, and impartial performance of
40 his or her duties as a judicial officer.

41 (e) All family law masters, and all necessary clerical
42 and secretarial assistants employed in the offices of
43 family law masters shall be deemed to be officers and
44 employees in the judicial branch of state government.
45 The director of the child advocate office and the
46 commissioner of the department of human services shall
47 enter into an agreement with the administrative office
48 of the supreme court of appeals whereby the office and
49 the department shall contract to pay the administrative

51 office of the supreme court of appeals for the services
52 of the family law masters required to be furnished
53 under the provisions of this chapter which are not
54 otherwise payable from the family law masters fund
55 created under the provisions of section twenty-two,
56 article two of this chapter. Each county commission of
57 this state shall enter into an agreement with the
58 administrative office of the supreme court of appeals
59 whereby the administrative office of the supreme court
60 of appeals shall contract to pay to the county commission
61 a reasonable amount as rent for premises furnished by
62 the county commission to the family law master, which
63 premises shall be adequate for the conduct of the duties
64 required of such master under the provisions of this
65 chapter.

66 (f) A family law master appointed under the provi-
67 sions of this article shall receive as full compensation for
68 his or her services an annual salary of thirty-five
69 thousand dollars. The secretary-clerk of the family law
70 master shall receive an annual salary of fifteen thousand
71 dollars and shall be appointed by the family law master
72 and serve at his or her will and pleasure. Disbursement
73 of salaries shall be made by or pursuant to the order
74 of the director of the administrative office of the
75 supreme court of appeals.

76 (g) Family law masters serving under the provisions
77 of this article shall be allowed their actual and necessary
78 expenses incurred in the performance of their duties.
79 Such expenses and compensation shall be determined
80 and paid by the director of the administrative office of
81 the supreme court of appeals under such regulations as
82 he or she may prescribe with the approval of the
83 supreme court of appeals.

84 (h) The offices of the family law masters shall be
85 distributed geographically so as to provide an office of
86 the family law master for each of the following areas:

- 87 (1) The counties of Brooke, Hancock and Ohio;
- 88 (2) The counties of Marshall, Tyler and Wetzel;
- 89 (3) The counties of Pleasants, Ritchie, Wirt and Wood;

- 89 (4) The counties of Calhoun, Jackson and Roane;
90 (5) The counties of Mason and Putnam;
91 (6) The county of Cabell;
92 (7) The counties of McDowell and Wyoming;
93 (8) The counties of Logan and Mingo;
94 (9) The county of Kanawha;
95 (10) The county of Raleigh;
96 (11) The counties of Mercer, Monroe and Summers;
97 (12) The counties of Fayette and Nicholas;
98 (13) The counties of Greenbrier and Pocahontas;
99 (14) The counties of Braxton, Clay, Gilmer and
100 Webster;
101 (15) The counties of Doddridge, Harrison, Lewis and
102 Upshur;
103 (16) The counties of Marion and Taylor;
104 (17) The counties of Monongalia and Preston;
105 (18) The counties of Barbour, Randolph and Tucker;
106 (19) The counties of Grant, Hampshire, Hardy,
107 Mineral and Pendleton;
108 (20) The counties of Berkeley, Jefferson and Morgan;
109 and
110 (21) The counties of Boone, Lincoln and Wayne.

111 The governor shall appoint two masters to the office
112 of the family law master for the area of Kanawha
113 County. In each of the other areas defined by this
114 subsection, the governor shall appoint one person as
115 family law master from such area. Nothing contained
116 herein shall prohibit the chief justice of the supreme
117 court of appeals from temporarily assigning, from time
118 to time as caseload may dictate, a family law master
119 from one geographical area to another geographical
120 area.

121 (i) A circuit court or the chief judge thereof shall

123 refer to the master the following matters for hearing to
124 be conducted pursuant to section two of this article:

125 (1) Actions to obtain orders of support brought under
126 the provisions of section one, article five of this chapter
127 and commenced after the first day of October, one
128 thousand nine hundred eighty-six;

129 (2) All actions to establish paternity under the
130 provisions of article six of this chapter and commenced
131 after the first day of January, one thousand nine
132 hundred eighty-seven: *Provided*, That all actions
133 wherein either or both of the parties have demanded a
134 trial by jury of the law and the facts shall be heard by
135 the circuit court;

136 (3) All motions for pendente lite relief affecting child
137 custody, visitation, child support or spousal support filed
138 on or after the first day of November, one thousand nine
139 hundred eighty-six, wherein either party has requested
140 such referral or the court on its own motion in individ-
141 ual cases or by general order has referred such motions
142 to the master: *Provided*, That if the circuit court
143 determines, in its discretion, that the pleadings raise
144 substantial issues concerning the identification of
145 separate property or the division of marital property
146 which may have a bearing on an award of support, the
147 court may decline to refer a motion for support pendente
148 lite to the family law master;

149 (4) All petitions for modification of an order involving
150 child custody, child visitation, child support or spousal
151 support filed after the first day of December, one
152 thousand nine hundred eighty-six;

153 (5) After the first day of November, one thousand nine
154 hundred eighty-six, all actions for divorce which are
155 matured for final hearing as uncontested divorce actions
156 wherein the defending party has failed to answer or
157 appear, or having made an appearance has filed an
158 answer admitting irreconcilable differences or grounds
159 for divorce, has withdrawn his or her answer or other
160 responsive pleading, or has filed a notice of waiver of
161 further proceedings, and wherein all issues except the

162 question of whether or not a divorce should be granted
163 have been resolved;

164 (6) After the first day of October, one thousand nine
165 hundred eighty-six, all actions wherein an obligor is
166 contesting the enforcement of an order of support
167 through the withholding from income of amounts
168 payable as support or is contesting an affidavit of
169 accrued support, filed with a circuit clerk, which seeks
170 to collect arrearages;

171 (7) After the first day of December, one thousand nine
172 hundred eighty-six, all actions commenced under the
173 provisions of article seven of this chapter or under the
174 provisions of the revised uniform reciprocal enforcement
175 of support act of any other state;

176 (8) After the first day of January, one thousand nine
177 hundred eighty-seven, proceedings for the enforcement
178 of support, custody, or visitation orders, including
179 contempt, unless the alleged contemnor in such proceed-
180 ing has a right to trial by jury which has not been
181 waived; and

182 (9) After the first day of January, one thousand nine
183 hundred eighty-seven, contested divorce actions ma-
184 tured for final hearing, if in the discretion of the circuit
185 judge such referrals are appropriate: *Provided*, That the
186 circuit judge shall make such referrals on a case-by-case
187 basis.

188 (j) The fees for hearings before a master shall be paid
189 unless a party is excused from payment thereof under
190 the provisions of section one, article two, chapter fifty-
191 nine of this code.

192 (k) Fees for hearings before a master shall be taxed
193 as court costs, which costs may be assessed against
194 either party or apportioned between the parties, in the
195 discretion of the master. The assessment of court costs
196 shall be included as findings in each case of a master's
197 recommended decision. The fees for hearings before a
198 master shall be as follows:

199 (1) For an action to establish an order of support, fifty
200 dollars;

201 (2) For an action to establish paternity, one hundred
202 dollars;

203 (3) For a motion for pendente lite relief affecting
204 custody, visitation, child support or spousal support,
205 fifty dollars;

206 (4) For a petition for modification of an order
207 involving child custody, child visitation, child support or
208 spousal support, fifty dollars;

209 (5) For an uncontested divorce action, fifty dollars;

210 (6) For a proceeding for the enforcement of an order,
211 fifty dollars.

212 (7) For a contested divorce action matured for final
213 hearing, fifty dollars for the first hour or any portion
214 thereof, and thirty dollars per hour for each subsequent
215 hour or any portion thereof.

216 (1) Persons entitled to notice of a master's hearing
217 shall be timely informed of:

218 (1) The time, place and nature of the hearing;

219 (2) The legal authority and jurisdiction under which
220 the hearing is to be held; and

221 (3) The matters of fact and law asserted.

222 (m) The master shall give all interested parties
223 opportunity for the submission and consideration of
224 facts, arguments, offers of settlement or proposals of
225 adjustment when time, the nature of the proceedings
226 and the public interest permit. To the extent that the
227 parties are unable to settle or compromise a controversy
228 by consent, the master shall provide the parties a
229 hearing and decision in accordance with the provisions
230 of sections two and three of this article.

231 (n) The master who presides at the reception of
232 evidence pursuant to section two of this article shall
233 make the recommended decision required by section
234 three of this article. Except to the extent required for
235 disposition of ex parte matters as authorized by this
236 chapter, a master may not consult a person or party on
237 a fact in issue, unless on notice and opportunity for all

237 parties to participate; nor shall the master attempt to
238 supervise or direct an employee or agent engaged in the
239 performance of investigative or prosecuting functions
240 for a prosecuting attorney, the department of human
241 services or any other agency or political subdivision of
242 this state.

§48A-4-2. Hearing procedures.

1 (a) This section applies, according to the provisions
2 thereof, to hearings required by section one of this
3 article to be conducted in accordance with this section.

4 (b) A master appointed under the provisions of section
5 one of this article shall preside at the taking of evidence.
6 The functions of the master shall be conducted in an
7 impartial manner. A master may at any time disqualify
8 himself or herself. Upon such disqualification, or upon
9 the filing in good faith of a timely and sufficient
10 affidavit of personal bias or other disqualification of a
11 master, the circuit court or the chief judge thereof may
12 appoint a temporary master or the circuit court may
13 receive the evidence and determine the matter.

14 (c) A master presiding at a hearing under the
15 provisions of this chapter may:

16 (1) Administer oaths and affirmations, compel the
17 attendance of witnesses and the production of docu-
18 ments, examine witnesses and parties, and otherwise
19 take testimony and establish a record;

20 (2) Rule on offers of proof and receive relevant
21 evidence;

22 (3) Take depositions or have depositions taken when
23 the ends of justice may be served;

24 (4) Regulate the course of the hearing;

25 (5) Hold conferences for the settlement or simplifica-
26 tion of issues by consent of the parties;

27 (6) Dispose of procedural requests or similar matters;

28 (7) Accept voluntary acknowledgments of support
29 liability or paternity;

- 30 (8) Accept stipulated agreements;
- 31 (9) Prepare default orders for entry if the person
32 against whom an action is brought does not respond to
33 notice or process within the time required;
- 34 (10) Recommend decisions in accordance with the
35 provisions of section three of this article; and
- 36 (11) Take other action authorized by general order of
37 the circuit court or the chief judge thereof consistent
38 with the provisions of this chapter.
- 39 (d) Except as otherwise provided by law, a moving
40 party has the burden of proof on a particular question
41 presented. Any oral or documentary evidence may be
42 received, but the master shall exclude irrelevant,
43 immaterial, or unduly repetitious evidence. A party is
44 entitled to present his or her case or defense by oral or
45 documentary evidence, to submit rebuttal evidence, and
46 to conduct such cross-examination as may be required
47 for a full and true disclosure of the facts. In determining
48 claims for money due or the amount of payments to be
49 made, when a party will not be prejudiced thereby, the
50 master may adopt procedures for the submission of all
51 or part of the evidence in written form.
- 52 (e) Hearings before a master shall be recorded
53 electronically. When requested by either of the parties,
54 a master shall make a transcript, verified by oath, of
55 each hearing held. Unless otherwise ordered by the
56 court, the cost of preparing a transcript shall be paid
57 by the party requesting the transcript.
- 58 (f) The recording of the hearing or the transcript of
59 testimony, as the case may be, and the exhibits, together
60 with all papers and requests filed in the proceeding,
61 constitute the exclusive record for decision in accor-
62 dance with section three of this article, and on payment
63 of lawfully prescribed costs, shall be made available to
64 the parties. When a master's recommended decision
65 rests on official notice of a material fact not appearing
66 in the evidence in the record, a party is entitled, on
67 timely request, to an opportunity to show the contrary.

§48A-4-3. Default orders; temporary orders.

1 (a) In any proceeding in which the amount of support
2 is to be established, if the obligor has been served with
3 notice of a hearing before a master and does not enter
4 an appearance, the family law master shall prepare a
5 default order for entry by the circuit judge, which order
6 shall fix support in an amount at least equal to the
7 amount paid as public assistance under section four,
8 article three, chapter nine of this code if the obligee or
9 custodian receives public assistance, or in an amount at
10 least equal to the amount that would be paid as public
11 assistance if the obligee or custodian were eligible to
12 receive public assistance, unless the family law master
13 has sufficient information in the record so as to
14 determine the amount to be fixed in accordance with the
15 child support guidelines.

16 (b) A master who presides at a hearing under the
17 provisions of section two of this article is authorized to
18 make and enter pendente lite support and custody
19 orders which, when entered, shall be enforceable and
20 have the same force and effect under law as pendente
21 lite support orders made and entered by a judge of the
22 circuit court, unless and until such support orders are
23 modified, vacated, or superseded by an order of the
24 circuit court.

25 (c) All orders prepared by a master shall provide for
26 automatic withholding from income of the obligor if
27 arrearages in support occur, if no such provision already
28 exists in prior orders.

§48A-4-4. Recommended decisions.

1 (a) This section applies, according to the provisions
2 thereof, when a hearing has been conducted in accor-
3 dance with section two of this article.

4 (b) A master who has presided at the hearing pursu-
5 ant to section two of this article shall recommend a
6 decision to the circuit court within ten days following
7 the close of the evidence. Before the recommended
8 decision is made, the master may, in his discretion,
9 require the parties to submit proposed findings and
10 conclusions and the supporting reasons therefor.

11 (c) A copy of each report, recommendation, and any
12 supporting documents or a summary of supporting
13 documents, prepared or used by the children's advocate
14 or an employee of the child advocate office, and all
15 documents introduced into evidence before the master,
16 shall be made available to the attorney for each party
17 and to each of the parties before the circuit court takes
18 any action on the recommendation.

19 (d) All recommended decisions of the master shall
20 include (1) a statement of findings and conclusions, and
21 the reasons or basis therefor, on all the material issues
22 of fact, law, or discretion presented on the record; and
23 (2) the proposed order embodying the appropriate
24 sanction, relief, or denial thereof.

§48A-4-5. Orders to be entered by circuit court exclusively.

1 With the exception of pendente lite support and
2 custody orders entered by a master in accordance with
3 the provisions of section three of this article, an order
4 imposing sanctions or granting or denying relief may
5 not be made and entered except by a circuit court within
6 the jurisdiction of said court and as authorized by law.

§48A-4-6. Circuit court review of master's action or recommended decision.

1 A person who alleges that he or she will be adversely
2 affected or aggrieved by a recommended decision of a
3 master is entitled to review of the proceedings. The
4 recommended decision of the master is the subject of
5 review by the circuit court, and a preliminary or
6 procedural action or ruling not directly reviewable is
7 subject to review only upon the review of the recom-
8 mended decision by the circuit court.

§48A-4-7. Procedure for review by circuit court.

1 (a) Within ten days after the recommended decision
2 of a master is returned and filed, any party may file
3 exceptions thereto in a petition requesting that the
4 action be reviewed by the circuit court upon the master's
5 report. At the time of filing the petition, a copy of the
6 petition for review shall be served on all parties to the

7 proceeding, in the same manner as pleadings subse-
8 quent to an original complaint are served under rule
9 five of the rules of civil procedure for trial courts of
10 record.

11 (b) Not more than ten days after the filing of the
12 petition for review, a responding party wishing to file
13 a cross-petition that would otherwise be untimely may
14 file, with proof of service on all parties, a cross-petition
15 for review.

§48A-4-8. Form of petition for review.

1 The petition for review shall contain, in the order
2 indicated:

3 (a) A list of exceptions in the form of questions
4 presented for review, expressed in the terms and
5 circumstances of the case, designating and pointing out
6 the errors complained of with reasonable certainty, so
7 as to direct the attention of the circuit court specifically
8 to them, but without unnecessary detail. The statement
9 of questions should be short and concise and should not
10 be argumentative or repetitious. The statement of a
11 question presented will be deemed to comprise every
12 subsidiary question fairly included therein. Only the
13 questions set forth in the petition or fairly included
14 therein will be considered by the court. Parts of the
15 master's report not excepted to are admitted to be
16 correct, not only as regards the principles, but as to the
17 evidence upon which they are founded.

18 (b) A concise statement of the case containing the
19 facts material to a consideration of the questions
20 presented.

21 (c) A direct and concise argument amplifying the
22 reasons relied upon for modification of the master's
23 recommended decision and citing the constitutional
24 provisions, statutes and regulations which are applica-
25 ble.

§48A-4-9. Brief in opposition to a petition for review.

1 (a) A respondent shall have ten days after the filing
2 of a petition within which to file an opposing brief

3 disclosing any matter or ground why the recommended
4 decision of the master should not be modified by the
5 court in the manner sought by the petition.

6 (b) No motion by a respondent to dismiss a petition
7 for review will be received.

8 (c) Any party may file a supplemental brief at any
9 time while a petition for review is pending, calling
10 attention to new cases or legislation or other intervening
11 matter not available at the time of the party's last filing.

§48A-4-10. Circuit court review of master's recommended decision.

1 (a) The circuit court shall proceed to a review of the
2 recommended decision of the master when:

3 (1) No petition has been filed within the time allowed,
4 or the parties have expressly waived the right to file a
5 petition;

6 (2) A petition and brief in opposition have been filed,
7 or the time for filing a brief in opposition has expired,
8 or the parties have expressly waived the right to file a
9 brief in opposition, as the case may be.

10 (b) To the extent necessary for decision and when
11 presented, the circuit court shall decide all relevant
12 questions of law, interpret constitutional and statutory
13 provisions, and determine the appropriateness of the
14 terms of the recommended decision of the master.

15 (c) The circuit court shall examine the recommended
16 decision of the master, along with the findings and
17 conclusions of the master, and may enter an order in
18 conformance with the recommended decision, may
19 recommit the case, with instructions, for further
20 hearing before the master or may, in its discretion, enter
21 an order upon different terms, as the ends of justice may
22 require. The circuit court shall not follow the recom-
23 mendation, findings, and conclusions of a master found
24 to be:

25 (1) Arbitrary, capricious, an abuse of discretion, or
26 otherwise not in conformance with the law;

27 (2) Contrary to constitutional right, power, privilege,
28 or immunity;

29 (3) In excess of statutory jurisdiction, authority, or
30 limitations, or short of statutory right;

31 (4) Without observance of procedure required by law;

32 (5) Unsupported by substantial evidence; or

33 (6) Unwarranted by the facts.

34 (d) In making its determinations under this section,
35 the circuit court shall review the whole record or those
36 parts of it cited by a party. If the circuit court finds that
37 a master's recommended decision is deficient as to
38 matters which might be affected by evidence not
39 considered or inadequately developed in the master's
40 recommended decision, the court may recommit the
41 recommended decision to the master, with instructions
42 indicating the court's opinion, or the circuit court may
43 proceed to take such evidence without recommitting the
44 matter.

45 (e) The order of the circuit court entered pursuant to
46 the provisions of subsection (d) of this section shall be
47 entered not later than ten days after the time for filing
48 pleadings or briefs has expired or after the filing of a
49 notice or notices waiving the right to file such pleading
50 or brief.

51 (f) If a case is recommitted by the circuit court, the
52 master shall retry the matter within twenty days.

53 (g) At the time a case is recommitted, the circuit
54 court shall enter appropriate pendente lite orders
55 awarding custody, visitation, child support, spousal
56 support or such other temporary relief as the circum-
57 stances of the parties may require.

§48A-4-11. Legislative findings and intent.

1 In enacting the provisions of this article during the
2 second extraordinary session of the Legislature, one
3 thousand nine hundred eighty-six, the Legislature
4 makes its findings of fact and asserts its statements of
5 purposes and intent as follows:

6 During the regular session of the Legislature, one
7 thousand nine hundred eighty-six, the Legislature
8 enacted Enrolled House Bill 2094, a comprehensive act
9 which dealt with domestic relations law generally and
10 child support and other related issues specifically. In
11 that legislation, the Legislature provided for expedited
12 procedures in actions involving child support and
13 related domestic relations matters.

14 Since the passage of said Enrolled House Bill 2094,
15 the expedited procedures established by the Legislature
16 have been found by the supreme court of appeals to be
17 unconstitutional on the grounds that the legislation
18 attempted to divest the circuit courts of this state of
19 their constitutional jurisdiction for divorce and other
20 domestic matters.

21 In order to comply with federal law regarding child
22 support enforcement, it is incumbent upon the Legisla-
23 ture to create an expedited process for obtaining and
24 enforcing child support orders. Failure to meet federal
25 standards poses a threat to the state in the form of a
26 loss of public assistance funds and the unavailability of
27 incentive payments based on support collections.

28 In West Virginia, as in other states, numerous
29 problems arise out of establishing and enforcing child
30 support orders through the traditional court system. As
31 the volume of support cases has grown and the use of
32 courts in general to resolve disputes has increased, the
33 result has been lengthy delays in resolving child support
34 cases. In some cases, resolution of the issues is never
35 attempted or resolved. In divorce cases, the not infre-
36 quent use of appointed commissioners, while easing the
37 workload of the circuit court, can result in fees which
38 are not reasonable and payment to a commissioner
39 which is an undue financial burden. Further, jurisdic-
40 tion and authority over support issues have been divided
41 among the various personnel and officials who prepare
42 and decide child support matters. There has been a lack
43 of uniformity in the establishment of appropriate
44 support amounts. Use of the traditional court system to
45 determine and enforce child support obligations has
46 exacerbated the adversarial nature of the proceedings,

47 and furthered the division between parents, often
48 diminishing the desire to meet such obligations.

49 It is the intention of the Legislature, with the passage
50 of this legislation, to reconcile the requirements of
51 federal law, the ruling of the supreme court of appeals
52 as to the constitutional jurisdiction of the circuit courts,
53 and the needs of this state. The Legislature desires to
54 fully protect the constitutional jurisdiction of the courts
55 while complying with applicable federal law and
56 creating in this state a unified set of family law
57 remedies to eliminate the problems identified herein.

58 If, in fact, the ruling of the supreme court of appeals
59 as to the jurisdiction of the circuit courts precludes the
60 use of any expedited process, administrative or quasi-
61 judicial, in which the presiding officer is not a judge,
62 then compliance with federal law would be impossible,
63 absent an amendment to the Constitution of the state.
64 Accordingly, the Legislature has adopted the approach
65 embodied in this legislation to avoid that drastic action.

66 The expedited process set forth herein is modeled
67 upon traditional equity practice in this state which has
68 utilized commissioners in chancery, masters, master's
69 reports and recommended decisions, authoritative
70 review by the circuit courts and other devices of an
71 equitable nature.

72 Further, the Legislature anticipates that the proced-
73 ural rule-making power of the supreme court of appeals
74 provided for in the Judicial Reorganization Amendment
75 of 1974 to the West Virginia Constitution and in section
76 four, article one, chapter fifty-one of this code may be
77 utilized, so that the portions of this legislation relating
78 to pleading, practice and procedure shall have force and
79 effect only as rules of court and remain in effect unless
80 and until modified, suspended or annulled by rules
81 promulgated by the supreme court of appeals.

**§48A-4-12. Termination of family law masters system by
law.**

1 The family law masters system shall be terminated on
2 the first day of July, one thousand nine hundred ninety-

3 one, unless review of its functions shall be undertaken
4 pursuant to the provisions of sections nine, ten and
5 eleven, article ten, chapter four of this code.

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

**§48A-5-3. Withholding from income of amounts payable
as support.**

1 (a) An order which provides for the withholding of
2 amounts payable as support shall be enforced by the
3 children's advocate in accordance with the provisions of
4 this section. Every support order entered by a circuit
5 court or a magistrate of this state prior to the first day
6 of July, one thousand nine hundred eighty-six, and every
7 support order entered by a court of competent jurisdic-
8 tion of another state shall be considered to provide for
9 an order of income withholding by operation of law,
10 notwithstanding the fact that such support order does
11 not in fact provide for such an order of withholding.
12 Under such orders, income withholding shall be imple-
13 mented under the same circumstances and enforced in
14 the same manner as in the case of orders of withholding
15 which are included in support orders entered on or after
16 the first day of July, one thousand nine hundred eighty-
17 six.

18 (b)(1) When required to pursue the enforcement of an
19 order of support through the withholding of income in
20 accordance with the provisions of subsection (e), section
21 three, article three of this chapter, the children's
22 advocate shall cause the mailing of a notice pursuant to
23 this section when the support payments required by the
24 order are in arrears a specific number of days, as
25 follows:

26 (A) If the order requires support to be paid in
27 monthly installments, the notice shall be sent on the day
28 when the support payments are thirty days in arrears;
29 or

30 (B) If the order requires support to be paid in weekly
31 or bi-weekly installments, the notice shall be sent on the
32 day when the support payments are twenty-eight days
33 in arrears.

34 (2) The number of days support payments are in
35 arrears shall be considered to be the total cumulative
36 number of days during which payments required by a
37 court order have been delinquent, whether or not such
38 days are consecutive.

39 (c) When the required payments are in arrears the
40 requisite number of days in a case, the children's
41 advocate shall immediately do the following:

42 (1) If there is an existing support order which has
43 been entered by a court of competent jurisdiction so that
44 withholding can occur without the need for any amend-
45 ment to the support order or for any further action by
46 a court, the children's advocate shall send the notice
47 prescribed by the provisions of subsection (d) of this
48 section; or

49 (2) If there is no existing support order upon which
50 withholding can be based, either by its terms or by
51 operation of law, the children's advocate shall commence
52 an action to obtain a support order in accordance with
53 the provisions of section one of this article, so as to
54 establish a support order which provides for
55 withholding.

56 (d) If notice required by subsection (b) of this section
57 is appropriate, the children's advocate shall determine
58 the time for a meeting between the obligor and the
59 children's advocate and the time for a hearing before the
60 family law master, and shall then set forth in such
61 notice the times and places at which the meeting and
62 hearing will be held if withholding is contested. The
63 meeting and hearing may be scheduled on the same
64 date, but in no case shall the meeting with the advocate
65 be scheduled less than fifteen days after the date the
66 notice is mailed nor shall the hearing before the master
67 be scheduled more than twenty-one days after the date
68 the notice is mailed. The children's advocate shall send
69 such notice by first class mail to the delinquent obligor.
70 The notice shall inform the delinquent obligor of the
71 following:

72 (1) The amount owed;

73 (2) That it is proposed that there be withholding from

74 the obligor's income of amounts payable as support, and
75 that if withholding is uncontested, or is contested but
76 determined appropriate, the amount withheld will be
77 equal to the amount required under the terms of the
78 current support order, plus amounts for any outstanding
79 arrearages;

80 (3) An identification of the type or types of income
81 from which amounts payable as support will be with-
82 held, and a statement of the amounts proposed to be
83 withheld, expressed in meaningful terminology such as
84 dollar amounts or a percentage of disposable earnings,
85 as may be appropriate for the type of income involved;

86 (4) That the withholding will apply to the obligor's
87 present source of income and to any future source of
88 income;

89 (5) That any action by the obligor to purposefully
90 minimize his or her income will result in the enforce-
91 ment of support being based upon potential and not just
92 actual earnings;

93 (6) That payment of the arrearage after the date of
94 the notice is not a bar to such withholding;

95 (7) That if the obligor wishes to agree to withholding
96 that he or she should notify the children's advocate, in
97 writing, within fourteen days from the date of the notice
98 in order to cancel a scheduled meeting with the office
99 of the children's advocate and a hearing with the family
100 law master;

101 (8) That if the obligor fails to respond to the notice
102 or fails to appear at the meeting or hearing after
103 responding to the notice, withholding will automatically
104 occur as described in the notice;

105 (9) That if the obligor desires to contest the withhold-
106 ing on the grounds that the amount to be withheld is
107 incorrect or that withholding is not proper because of
108 mistakes of fact, he or she must, within fourteen days
109 of the date of the notice, inform the children's advocate
110 in writing of the reasons why the proposed withholding
111 is contested;

112 (10) That a mistake of fact exists only when there is
113 an error in the amount of current or overdue support

114 claimed in the notice, there is a mistake as to the
115 identity of the obligor, or the amount of the proposed
116 withholding exceeds the amount permitted to be
117 withheld under applicable federal or state law;

118 (11) That matters such as lack of visitation, inappro-
119 priateness of the support award, or changed financial
120 circumstances of the obligee or the obligor will not be
121 considered at any hearing held pursuant to the notice,
122 but may be raised by the filing of a separate petition;

123 (12) That if the obligor contests the withholding, in
124 writing, a meeting with the children's advocate will be
125 held at a time and place set forth in the notice, for the
126 purpose of attempting to settle any issues which are
127 contested;

128 (13) That if the meeting with the children's advocate
129 fails to resolve the issues being contested, a hearing
130 before the family law master will be held at a time and
131 place set forth in the notice, and that following such
132 hearing, the master will make a recommended decision
133 to the circuit court; and

134 (14) That a master's recommended decision as to
135 withholding will become effective when it is confirmed
136 and an order is entered by the circuit court, and that
137 if the obligor disagrees with the master's recommended
138 decision, he or she will be given the opportunity to make
139 objections known to the circuit court.

140 (e) After a final determination that withholding
141 should occur, the children's advocate shall proceed to
142 withhold so much of the obligor's income as is necessary
143 to comply with the order authorizing such withholding,
144 up to the maximum amount permitted under applicable
145 law. Such withholding, unless otherwise terminated
146 under the provisions of this section, shall apply to any
147 subsequent source of income or any subsequent period
148 of time during which income is received by the obligor.

149 (f) Notwithstanding any other provision of this code
150 to the contrary which provides for a limitation upon the
151 amount which may be withheld from earnings through
152 legal process, the amount of an obligor's aggregate
153 disposable earnings for any given workweek which can

154 be withheld as support payments is to be determined in
155 accordance with the provisions of this subsection, as
156 follows:

157 (1) After ascertaining the status of the payment
158 record of the obligor under the terms of the support
159 order, the payment record shall be examined to deter-
160 mine whether any arrearages are due for amounts
161 which should have been paid prior to a twelve week
162 period which ends with the workweek for which
163 withholding is sought to be enforced.

164 (2) If none of the withholding is for amounts which
165 came due prior to such twelve week period, then:

166 (A) When the obligor is supporting another spouse or
167 dependent child other than the spouse or child for whom
168 the proposed withholding is being sought, the amount
169 withheld may not exceed fifty percent of the obligor's
170 disposable earnings for that week; and

171 (B) When the obligor is not supporting another spouse
172 or dependent child as described in paragraph (A) of this
173 subdivision, the amount withheld may not exceed sixty
174 percent of the obligor's disposable earnings for that
175 week.

176 (3) If a part of the withholding is for amounts which
177 came due prior to such twelve week period, then:

178 (A) Where the obligor is supporting another spouse or
179 dependent child other than the spouse or child for whom
180 the proposed withholding is being sought, the amount
181 withheld may not exceed fifty-five percent of the
182 obligor's disposable earnings for that week; and

183 (B) Where the obligor is not supporting another
184 spouse or dependent child as described in paragraph (A)
185 of this subdivision, the amount withheld may not exceed
186 sixty-five percent of the obligor's disposable earnings for
187 that week.

188 (4) In addition to the percentage limitations set forth
189 in subdivisions (2) and (3) of this subsection, it shall be
190 a further limitation that in no case shall the total
191 amounts withheld for current payments plus arrearages
192 exceed the amounts withheld for current payments by

193 an amount greater than ten percent of the obligor's
194 disposable income.

195 (5) The provisions of this subsection shall apply
196 directly to the withholding of disposable earnings of an
197 obligor regardless of whether the obligor is paid on a
198 weekly, biweekly, monthly or other basis.

199 (6) If an obligor acts so as to purposefully minimize
200 his or her income and to thereby circumvent the
201 provisions of this section which provide for withholding
202 from income of amounts payable as support, the amount
203 to be withheld as support payments may be based upon
204 the obligor's potential earnings rather than his or her
205 actual earnings, and such obligor may not rely upon the
206 percentage limitations set forth in this subsection which
207 limit the amount to be withheld from disposable
208 earnings.

209 (g) The source of income of any obligor who is subject
210 to withholding, upon being given notice of withholding,
211 shall withhold from such obligor's income the amount
212 specified by the notice and pay such amount to the child
213 advocate office for distribution in accordance with the
214 provisions of section four, article three of this chapter.
215 The notice given to the source of income shall contain
216 only such information as may be necessary for the
217 source of income to comply with the withholding order.
218 Such notice to the source of income shall include, at a
219 minimum, the following:

220 (1) The amount to be withheld from the obligor's
221 income, and a statement that the amount to be withheld
222 for support and other purposes, including the fee
223 specified under subdivision (3) of this subsection, may
224 not be in excess of the maximum amounts permitted
225 under section 303(b) of the Federal Consumer Credit
226 Protection Act or limitations imposed under the provi-
227 sions of this code;

228 (2) That the source of income must send the amount
229 to be withheld from the obligor's income to the child
230 advocate office within ten days of the date the obligor
231 is paid;

232 (3) That, in addition to the amount withheld under the

233 provisions of subdivision (1) of this subsection, the source
234 of income may deduct a fee, not to exceed fifty cents,
235 for administrative costs incurred by the source of
236 income, for each withholding;

237 (4) That withholding is binding on the source of
238 income until further notice by the child advocate office;

239 (5) That the source of income is subject to a fine for
240 discharging an obligor from employment, refusing to
241 employ, or taking disciplinary action against any obligor
242 because of the withholding;

243 (6) That if the source of income fails to withhold
244 income in accordance with the provisions of the notice,
245 the source of income is liable for the accumulated
246 amount the source of income should have withheld from
247 the obligor's income;

248 (7) That the withholding under the provisions of this
249 section shall have priority over any other legal process
250 under the laws of this state against the same income;

251 (8) That the source of income may combine withheld
252 amounts from obligors' income in a single payment to
253 the child advocate office and separately identify the
254 portion of the single payment which is attributable to
255 each obligor;

256 (9) That the source of income must implement with-
257 holding no later than the first pay period or first date
258 for payment of income that occurs after fourteen days
259 following the date the notice to the source of income was
260 mailed; and

261 (10) That the source of income must notify the child
262 advocate office promptly when the obligor terminates
263 his or her employment or otherwise ceases receiving
264 income from the source of income, and must provide the
265 obligor's last known address and the name and address
266 of the obligor's new source of income, if known.

267 (h) The director shall, by administrative rule, estab-
268 lish procedures for promptly refunding to obligors
269 amounts which have been improperly withheld under
270 the provisions of this section.

271 (i) A source of income must send the amount to be

272 withheld from the obligor's income to the child advocate
273 office within ten days of the date the obligor is paid.

274 (j) In addition to any amounts payable as support
275 withheld from the obligor's income, the source of income
276 may deduct a fee, not to exceed fifty cents, for admin-
277 istrative costs incurred by the source of income, for
278 each withholding.

279 (k) Withholding of amounts payable as support under
280 the provisions of this section is binding on the source of
281 income until further notice by the child advocate office.

282 (l) Every source of income who receives a notice of
283 withholding under the provisions of this section shall
284 implement withholding no later than the first pay
285 period or first date for the payment of income which
286 occurs after fourteen days following the date the notice
287 to the source of income was mailed.

288 (m) A source of income who employs or otherwise
289 pays income to an obligor who is subject to withholding
290 under the provisions of this section must notify the child
291 advocate office promptly when the obligor terminates
292 employment or otherwise ceases receiving income from
293 the source of income, and must provide the office with
294 the obligor's last known address and the name and
295 address of the obligor's new source of income, if known.

296 (n) A source of income who has more than a single
297 obligor who is subject to withholding from income under
298 the provisions of this article may combine all withheld
299 amounts into a single payment to the child advocate
300 office, with the portion thereof which is attributable to
301 each obligor being separately designated.

302 (o) A source of income is liable to an obligee, includ-
303 ing the state of West Virginia or the department of
304 human services where appropriate, for any amount
305 which the source of income fails to withhold from
306 income due an obligor following receipt by such source
307 of income of proper notice under subsection (h) of this
308 section: *Provided*, That a source of income shall not be
309 required to vary the normal pay and disbursement
310 cycles in order to comply with the provisions of this
311 section.

312 (p) Support collection under the provisions of this
313 article shall have priority over any other legal process
314 under state law against the same wages.

315 (q) Any source of income who discharges from
316 employment, refuses to employ, or takes disciplinary
317 action against any obligor subject to income withholding
318 required by this section because of the existence of such
319 withholding and the obligations or additional obligations
320 which it imposes on the source of income, shall be guilty
321 of a misdemeanor, and, upon conviction thereof, shall be
322 fined not less than five hundred dollars nor more than
323 one thousand dollars.

324 (r) At any time following a period of eighteen months
325 during which the obligor has owed no arrearages to the
326 obligee or to the state of West Virginia or any other
327 state, if the obligee and obligor agree to the termination
328 of withholding and demonstrate to the children's
329 advocate that there is a reliable alternative method by
330 which to make the support payments, they may request
331 the children's advocate to terminate withholding and
332 such withholding from income may cease until such
333 time as further withholding is required by law. The
334 director of the child advocate office shall, by legislative
335 rule, establish state termination standards which will
336 ensure, at a minimum, that withholding will not be
337 terminated where there are indications that it is
338 unlikely that support will continue without such
339 withholding. The mere fact that all arrearages have
340 been paid shall not be a sufficient ground for the
341 termination of withholding.

CHAPTER 3

(S. B. 10—By Senator Tomblin)

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

AN ACT to amend and reenact section two, article three, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating

to the children's advocate office location and number of employees.

Be it enacted by the Legislature of West Virginia:

That section two, article three, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-2. Placement of children's advocates throughout the state; supervision; office procedures.

- 1 (a) The child advocate office shall employ twenty-one
- 2 employees in the position of children's advocate, and the
- 3 offices of the children's advocates shall be distributed
- 4 geographically so as to provide an office for each of the
- 5 following areas of the state:
 - 6 (1) The counties of Brooke, Hancock and Ohio;
 - 7 (2) The counties of Marshall, Tyler and Wetzel;
 - 8 (3) The counties of Pleasants, Ritchie, Wirt and Wood;
 - 9 (4) The counties of Calhoun, Jackson and Roane;
 - 10 (5) The counties of Mason and Putnam;
 - 11 (6) The county of Cabell;
 - 12 (7) The counties of McDowell and Wyoming;
 - 13 (8) The counties of Logan and Mingo;
 - 14 (9) The county of Kanawha;
 - 15 (10) The county of Raleigh;
 - 16 (11) The counties of Mercer, Monroe and Summers;
 - 17 (12) The counties of Fayette and Nicholas;
 - 18 (13) The counties of Greenbrier and Pocahontas;
 - 19 (14) The counties of Braxton, Clay, Gilmer and
 - 20 Webster;
 - 21 (15) The counties of Doddridge, Harrison, Lewis and
 - 22 Upshur;
 - 23 (16) The counties of Marion and Taylor;

- 24 (17) The counties of Monongalia and Preston;
25 (18) The counties of Barbour, Randolph and Tucker;
26 (19) The counties of Grant, Hampshire, Hardy,
27 Mineral and Pendleton;
28 (20) The counties of Berkeley, Jefferson and Morgan;
29 and
30 (21) The counties of Boone, Lincoln and Wayne.
31 (b) Each children's advocate shall be appointed by the
32 director of the child advocate office. The children's
33 advocates shall be duly qualified attorneys licensed to
34 practice in the courts of this state.
35 (c) The children's advocate is an employee of the child
36 advocate office.

CHAPTER 4

(H. B. 207—By Mr. Speaker, Mr. Albright, and Delegate Swann, by request of the Executive)

[Passed July 20, 1986; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. **Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.**

- 1 The Legislature has duly considered the findings of
2 fact and recommendations for awards reported to it by
3 the court of claims in respect to the following named
4 claimants who were innocent victims of crime within the
5 state and entitled to compensation; and in respect to

6 each of such named claimants the Legislature adopts
 7 those findings of fact as its own, hereby declares it to
 8 be the moral obligation of the state to pay each such
 9 claimant in the amount specified below, and directs the
 10 auditor to issue warrants for the payment thereof out
 11 of any fund appropriated for the purpose.

12 *Claims for crime victims compensation awards:*

13 (TO BE PAID FROM CRIME VICTIMS COMPENSATION FUND)

14	(1) Carol L. Adkins	\$	833.33
15	(2) Lynn Adkins and Sue A. Pennington Co-Administrators		
16	of the Estate of Elmer L. Soler ..	\$	1,382.50
17	(3) Melissa Albright	\$	2,451.60
18	(4) Steven M. Aldridge	\$	4,193.62
19	(5) Arthur Lee Apitzsch	\$	20,000.00
20	(6) Nicholas Pete Arvon	\$	78.53
21	(7) William A. Behnke	\$	877.02
22	(8) James E. Bennett	\$	712.80
23	(9) Gregory M. Berry	\$	416.00
24	(10) Kenneth W. Bird	\$	1,388.45
25	(11) Mark B. Blackburn	\$	20,000.00
26	(12) Mary R. Blankenship	\$	1,250.00
27	(13) Brenda L. Bowen	\$	705.00
28	(14) Robert Earl Brannen	\$	1,885.00
29	(15) Julia B. Burleson	\$	1,250.00
30	(16) James Don Bush	\$	2,500.00
31	(17) Wanda L. Bush	\$	41,875.00
32	(18) Wanda L. Bush as guardian of Shane Dell Bush	\$	5,625.00
33	(19) James M. Byrd	\$	311.24
34	(20) Daniel R. Cahill	\$	787.75
35	(21) Howard B. Candler and Betty J. Candler	\$	1,250.00
36	(22) June K. Carden	\$	2,642.87
37	(23) Joseph B. Cecil	\$	6,156.77
38	(24) Jimmy K. Chambers	\$	5,021.45
39	(25) Yvonne M. Chambers	\$	23,070.74
40	(26) Yvonne M. Chambers as guardian of Leona Marie Chambers	\$	13,464.63
41	(27) Yvonne M. Chambers as guardian of Tina Louise Chambers	\$	13,464.63
42			
43			

44	(28)	Lenzy V. Cisco.....	\$	1,272.50
45	(29)	Opal R. Coffey	\$	1,250.00
46	(30)	Jackson L. Collins, Sr	\$	264.20
47	(31)	Donald K. Cooper	\$	3,666.30
48	(32)	James D. Cooper	\$	1,920.00
49	(33)	Paul W. Cunningham	\$	125.80
50	(34)	Robert Darrah.....	\$	1,250.00
51	(35)	David O. Davis	\$	56.90
52	(36)	Virgil S. Davis	\$	10,718.12
53	(37)	Bessie Dempsey	\$	445.50
54	(38)	Patsy L. Dennis.....	\$	5,816.65
55	(39)	William L. Dodrill	\$	433.36
56	(40)	Bradley B. Eberhart	\$	4,228.85
57	(41)	Doris P. Elswick.....	\$	20,000.00
58	(42)	Barbara J. Farley	\$	4,591.89
59	(43)	Charles E. Farley	\$	4,107.14
60	(44)	David Allen Farley	\$	4,107.14
61	(45)	Genevieve R. Farley	\$	10,000.00
62	(46)	Roger Lee Farley	\$	4,107.14
63	(47)	Zina E. Farley.....	\$	11,250.01
64	(48)	Roy C. Farmer	\$	1,058.21
65	(49)	F. Chris Fields	\$	10,000.00
66	(50)	Lynn Fields	\$	1,250.00
67	(51)	Susan Fields	\$	10,000.00
68	(52)	Michael D. Fitch.....	\$	1,755.70
69	(53)	Charles B. Forinash.....	\$	96.05
70	(54)	Gregory W. Geffken.....	\$	407.00
71	(55)	Dexter K. Gilbert	\$	20,000.00
72	(56)	Helen V. Gillum	\$	52.93
73	(57)	Mary Goad	\$	1,250.00
74	(58)	David C. Gowers.....	\$	155.64
75	(59)	Jeffrey C. Grandstaff	\$	756.06
76	(60)	Leslie A. Gray	\$	11,932.21
77	(61)	William P. Gross.....	\$	4,520.95
78	(62)	Bernice Ella Hair.....	\$	1,250.00
79	(63)	Albert J. Hamaker.....	\$	20,000.00
80	(64)	Sharlee Hanshaw	\$	10,000.00
81	(65)	James M. Harris.....	\$	146.26
82	(66)	Jeffrey T. Hawkins	\$	7,825.71
83	(67)	Stephen Michael Hayes	\$	3,062.79
84	(68)	Edith W. Hendricks	\$	1,250.00
85	(69)	Kenneth C. Herron.....	\$	8,805.87

86	(70)	James E. Hill	\$	653.10
87	(71)	Rella G. Hinkle	\$	1,164.74
88	(72)	Rella G. Hinkle, Administrator for Estate of Earnest A. Hinkle	\$	50,000.00
89	(73)	Thelmer J. Hollingsworth	\$	1,250.00
90	(74)	Rachel M. Hughart	\$	178.25
91	(75)	David C. Hunter	\$	20,000.00
92	(76)	Edward R. Ison	\$	23.04
93	(77)	James C. Jackson, Sr	\$	2,527.72
94	(78)	Dennis D. Jarrell	\$	6,837.30
95	(79)	Cora J. Johnson	\$	87.34
96	(80)	Kimmy J. Johnson	\$	4,089.95
97	(81)	Lottie Vista Jones	\$	20,000.00
98	(82)	Helen Kelly	\$	36,564.50
99	(83)	Helen Kelly as guardian of Harold Kelly	\$	13,435.50
100	(84)	Lottie King	\$	67.00
101	(85)	Jack Kirk	\$	336.80
102	(86)	Danny E. Knuckles, Sr	\$	3,801.41
103	(87)	Charles Krieger	\$	956.59
104	(88)	Lori Koontz Lanier	\$	41,065.00
105	(89)	Lori Koontz Lanier as guardian of Andrea Nichole Koontz	\$	8,935.00
106	(90)	Brenda K. Lewis	\$	5,004.40
107	(91)	Robert S. Lewis	\$	1,250.00
108	(92)	Donald W. Lilly	\$	225.00
109	(93)	Stephen K. Lilly, Committee for Kyle G. Lilly	\$	20,000.00
110	(94)	Donald D. Lucas, Jr	\$	20,000.00
111	(95)	Randy W. Lynch	\$	1,250.00
112	(96)	Darla S. Matheny	\$	43.57
113	(97)	Vollena Maynard	\$	4,083.43
114	(98)	Brenda Faye McPeake	\$	4,107.14
115	(99)	Kimberly J. McQuain	\$	856.20
116	(100)	Michelle M. Merica	\$	131.75
117	(101)	Ines W. Miller	\$	248.81
118	(102)	John C. Mills as guardian of Patrick E. Mills	\$	24,328.93
119	(103)	Roger L. Moffatt	\$	356.40
120	(104)	Michael R. Mooney	\$	20,000.00
121	(105)	Lanna Rhodes Moore	\$	17,758.87

122	(106)	Lanna Rhodes Moore as guardian of Robert D. Moore, III	\$ 2,241.13
123	(107)	Leslie D. Moore	\$ 209.98
124	(108)	Sylvia R. Moore	\$ 600.00
125	(109)	Elizabeth Jane Murphy	\$ 36,350.00
126	(110)	Elizabeth Jane Murphy as guardian of Kandace Michelle Murphy....	\$ 3,412.50
127	(111)	Elizabeth Jane Murphy as guardian of Krystal Jane Murphy	\$ 3,412.50
128	(112)	Elizabeth Jane Murphy as guardian of Bryan Mitchell Murphy	\$ 3,412.50
129	(113)	Elizabeth Jane Murphy as guardian of Kari Aynn Murphy	\$ 3,412.50
130	(114)	Barbara J. Musick	\$ 1,250.00
131	(115)	Barbara J. Musick as guradian of Eva Jo Musick	\$ 4,687.50
132	(116)	Joyce A. Nuckols	\$ 2,381.37
133	(117)	Darla K. Parrill	\$ 5,792.50
134	(118)	Mona P. Quinn	\$ 1,091.48
135	(119)	Donna S. Quintrell	\$ 2,942.18
136	(120)	Carolyn S. Ramey	\$ 39,677.62
137	(121)	Carolyn S. Ramey as guardian of Rebecca L. Ramey	\$ 9,072.38
138	(122)	Shirley Ramey	\$ 1,250.00
139	(123)	Edward O. Ray	\$ 4,650.34
140	(124)	James H. Redman	\$ 20,000.00
141	(125)	Bernard Riggs	\$ 173.79
142	(126)	James E. Robertson	\$ 291.00
143	(127)	William T. Robinson	\$ 288.00
144	(128)	Khristine Sue Sacco	\$ 11,250.00
145	(129)	Kathy L. Sandman	\$ 5,879.10
146	(130)	Kathy L. Sandman as guardian of Michael Sandman	\$ 5,879.09
147	(131)	David M. Shaffer	\$ 7,184.32
148	(132)	Robert T. Shepherd, Jr.	\$ 1,994.54
149	(133)	Bettie L. Sherwood	\$ 1,472.00
150	(134)	Glenn A. Sherwood	\$ 13,055.36
151	(135)	Betty L Siviero	\$ 353.54
152	(136)	Virginia Sizemore	\$ 4,107.14
153	(137)	Iva J. Skidmore	\$ 1,342.15
154	(138)	Iva J. Skidmore as guardian of Cheryl L. Skidmore	\$ 24,328.92

155	(139)	Linda Sue Smith	\$ 4,107.14
156	(140)	Monty S. Smith	\$ 2,962.44
157	(141)	Lorena R. Snodgrass	\$ 582.00
158	(142)	Sherman R. Spurlock	\$ 1,250.00
159	(143)	Randy L. Steele	\$ 16,633.31
160	(144)	Nora E. Stover	\$ 1,469.42
161	(145)	Ronald L. Streight	\$ 1,576.28
162	(146)	Eugene C. Suder	\$ 20,000.00
163	(147)	Donny G. Teters	\$ 4,833.38
164	(148)	Joseph V. Tenaglio	\$ 311.50
165	(149)	Robert T. Thomas	\$ 2,669.58
166	(150)	Terri J. Tibbs	\$ 328.75
167	(151)	Alyce G. Titus	\$ 498.90
168	(152)	Lorraine Toler	\$ 1,370.00
169	(153)	Frankie Lynn Tucker	\$ 44,150.00
170	(154)	Frankie Lynn Tucker as guardian of Crystal Lynn Tucker	\$ 1,950.00
171	(155)	Frankie Lynn Tucker as guardian of Amanda Kay Tucker	\$ 1,950.00
172	(156)	Frankie Lynn Tucker as guardian of John Edward Tucker	\$ 1,950.00
173	(157)	Russell H. Turner, Sr	\$ 190.98
174	(158)	Charles R. Tyson	\$ 2,364.21
175	(159)	Terry W. Unrue	\$ 20,000.00
176	(160)	Frank W. Vetter	\$ 413.26
177	(161)	Homer F. Ward	\$ 20,000.00
178	(162)	Rosemary Warmen	\$ 4,107.14
179	(163)	Raymond E. Weaver	\$ 865.00
180	(164)	Sarah Jane White	\$ 8,562.50
181	(165)	Sarah Jane White as guardian of Justin David White	\$ 3,750.00
182	(166)	Sarah Jane White as guardian of Jessica Ann White	\$ 3,375.00
183	(167)	Sarah Jane White as guardian of Jeremy Allen White	\$ 4,312.50
184	(168)	Patricia A. Wiles	\$ 32,937.50
185	(169)	Patricia A. Wiles as guardian of Christopher Wiles	\$ 11,700.00
186	(170)	Patricia A. Wiles as guardian of Donald Davis, Jr	\$ 5,362.50
187	(171)	Sharon K. Williams	\$ 36,350.00

188	(172)	Sharon K. Williams as guardian of Shane Williams	\$ 7,800.00
189	(173)	Sharon K. Williams as guardian of Marc Lewis	\$ 2,925.00
190	(174)	Sharon K. Williams as guardian of Julie Lewis	\$ 2,925.00
191	(175)	James H. Wilson	\$ 2,093.79
192	(176)	Shelia M. Wisinsky	\$ 321.61
193	(177)	Billie Sue Wright	\$ 20,000.00
194		TOTAL	\$ 1,232,792.67

195 The Legislature finds that the above moral obligations
 196 and the appropriations made in satisfaction thereof shall
 197 be the full compensation for all claimants herein;
 198 provided that any claimant herein who, subsequent to
 199 the payment of an award, receives or recovers benefits
 200 or advantages for the economic loss not prior considered
 201 by the court of claims in the course of and in reduction
 202 of the award of compensation, shall inform the court of
 203 claims and crime victims compensation fund of such
 204 recovery for determination of the amounts thereof and
 205 requirement for the deposit thereof in the crime victims
 206 compensation fund.

CHAPTER 5

(H. B. 213—By Delegates Farley and Hutchinson)

[Passed September 9, 1986; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article twenty by adding thereto a new section, designated section five-b, relating to the borrowing of money by the West Virginia regional jail authority from the consolidated fund established under the provisions of subsection (b), section eight, article six, chapter twelve of the code.

Be it enacted by the Legislature of West Virginia:

That section five, article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article twenty be further amended by adding thereto a new section, designated section five-b, all to read as follows:

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND PRISON AUTHORITY.

§31-20-5. Powers and duties of the authority; bidding procedures.

§31-20-5b. Authority of the West Virginia board of investments to make interest-bearing loans to the West Virginia regional jail authority.

§31-20-5. Powers and duties of the authority; bidding procedures.

1 The regional jail and prison authority shall complete
2 a comprehensive study of all prison and jail facilities in
3 the state of West Virginia no later than the first day of
4 July, one thousand nine hundred eighty-six. This study
5 shall include an assessment of the physical conditions of
6 confinement within the institutions and the relative need
7 for the institutions when considering other available
8 institutions of confinement located within the state.

9 After completing this study, the authority shall
10 submit a plan to the governor on the establishment of
11 regional jails in this state and the acquisition, construc-
12 tion or renovation of facilities for prisons. The authority
13 shall specify groups of counties within the state to be
14 formed into regions for the establishment of such
15 regional jails. Within each region a local jail commission
16 shall be established and have the powers and duties as
17 set forth in section six of this article.

18 The authority shall consider, but not be limited to, the
19 following when creating the plan establishing regions:

20 (1) The relative physical condition of the prisons and
21 jail facilities located within the state;

22 (2) The transportation costs associated with the
23 establishment of centralized jail services including, but
24 not limited to, the costs of transporting persons incar-
25 cerated in regional jails to court appearances, to
26 interviews with their attorneys and to have visitation

27 with their families and friends, all in any county seat
28 of a county served by the regional facility;

29 (3) The availability of medical services and educa-
30 tional and recreational opportunities;

31 (4) Information received from public hearings;

32 (5) The relative efficiency in the cost of jail services
33 caused by establishment of regional jail facilities;

34 (6) Available facilities which may be used as regional
35 jails or prisons including, but not limited to, existing
36 county and state owned properties;

37 (7) The cost of acquiring, constructing, renovating,
38 operating and maintaining local jail facilities for use as
39 local holding facilities in each county and regional jail
40 facilities for each county and the financing provided by
41 this article;

42 (8) The leasing of any available portion of any
43 regional jail space and the leasing of available facilities
44 of any regional jail to the West Virginia department of
45 corrections for the keeping and detaining of prisoners
46 sentenced to serve terms of incarceration under the
47 custody of the West Virginia department of corrections
48 for nonviolent crimes and to contract with the depart-
49 ment of corrections for the providing of food, clothing,
50 shelter and any and all incidental costs in the care,
51 control and maintenance of such prisoners: *Provided,*
52 That such leasing does not restrict space or facilities
53 needed for the detention of county prisoners;

54 (9) The advisability and cost effectiveness of acquir-
55 ing, constructing, renovating, operating and maintain-
56 ing work farms serving one or more counties or regions;
57 and

58 (10) The proximity of possible sites for the regional
59 jail facilities to residential areas, schools, churches and
60 other public buildings and facilities.

61 Public hearings pursuant to this section shall be held
62 by the authority in convenient locations throughout the
63 state. No less than ten public hearings shall be held for
64 public comment on the establishment of regional jails.

65 The authority shall cause to be published at least two
66 weeks in advance of a hearing a Class II-0 legal
67 advertisement, as provided in section two, article three,
68 chapter fifty-nine of this code, setting forth the reason
69 for the hearing and the time, place and date thereof. The
70 publication area shall be each county which may be
71 included in a region for the purposes of a regional jail
72 with the county in which the public hearing is held.

73 In addition to the hearing requirements above, before
74 beginning construction of a new facility for use as a
75 regional jail or prison facility or before beginning
76 renovation or acquisition of an existing facility for use
77 as a regional jail facility, which existing facility is not
78 already a jail, prison or secure facility for the detention
79 of juveniles or persons otherwise involuntarily commit-
80 ted or confined, the authority shall hold a hearing for
81 comment by all members of the public on all aspects
82 relating to the advisability of the use of the site for that
83 regional jail facility. The authority shall promulgate
84 rules and regulations pursuant to chapter twenty-nine-
85 a of this code for the requirements for notice and other
86 procedures of said public hearings which requirements
87 shall be as similar as practicable to those hearings
88 conducted regarding the construction of bridges by the
89 West Virginia department of highways.

90 The authority, as a public corporation and governmen-
91 tal instrumentality exercising public powers of the state,
92 may exercise all powers necessary or appropriate to
93 carry out the purposes of this article, including, but not
94 limited to, the power:

95 (a) To acquire, own, hold and dispose of property, real
96 and personal, tangible and intangible.

97 (b) To lease property, whether as lessee or lessor.

98 (c) To mortgage or otherwise grant security interests
99 in its property.

100 (d) To conduct examinations and investigations and to
101 hear testimony and take proof, under oath or affirma-
102 tion at public or private hearings, on any matter
103 relevant to this article and necessary for information on

104 the construction or renovation of any correctional
105 facility or the establishment of any prison industries
106 project.

107 (e) To issue subpoenas requiring the attendance of
108 witnesses and the production of books and papers
109 relevant to any hearing before such authority or one or
110 more members appointed by it to conduct any hearing.

111 (f) To apply to the circuit court having venue of such
112 offense to have punished for contempt any witness who
113 refuses to obey a subpoena to be sworn or affirmed, or
114 to testify or who commits any contempt after being
115 summoned to appear.

116 (g) To sue and be sued, implead and be impleaded,
117 and complain and defend in any court.

118 (h) To adopt, use and alter at will a corporate seal.

119 (i) To make bylaws for the management and regula-
120 tion of its affairs pursuant to article three, chapter
121 twenty-nine-a of this code.

122 (j) To appoint officers, agents and employees.

123 (k) To make contracts of every kind and nature and
124 to execute all instruments necessary or convenient for
125 carrying on its business.

126 (l) Without in any way limiting any other subdivision
127 of this section, to accept grants from and enter into
128 contracts and other transactions with any federal
129 agency.

130 (m) To borrow money and to issue its negotiable
131 bonds, security interests or notes and to provide for and
132 secure the payment thereof, and to provide for the rights
133 of the holders thereof, and to purchase, hold and dispose
134 of any of its bonds, security interests or notes: *Provided,*
135 *That no bond or other obligation, except for loans for*
136 *the seven facilities provided for under the provisions of*
137 *section five-b of this article, may be issued or incurred*
138 *unless and until the Legislature by concurrent resolu-*
139 *tion has approved the purpose and amount of each*
140 *project for which proceeds from the issuance of such*
141 *bond or other obligation will be used: Provided, however,*

142 That the authorization for loans under the provisions of
143 section five-b of this article is in lieu of the issuance of
144 bonds as authorized by this section, and any provision
145 of this code to the contrary notwithstanding, or any
146 authorizing language contained in any concurrent
147 resolution of the Legislature to the contrary notwith-
148 standing, the authority shall not issue bonds as herein
149 provided until and after the first day of July, one
150 thousand nine hundred eighty-seven.

151 (n) To sell at public or private sale any bond or other
152 negotiable instrument, security interest or obligation of
153 the authority in such manner and upon such terms as
154 the authority considers would best serve the purposes of
155 this article.

156 (o) To issue its bonds, security interests and notes
157 payable solely from the revenues or other funds
158 available to the authority therefor; and the authority
159 may issue its bonds, security interests or notes in such
160 principal amounts as it considers necessary to provide
161 funds for any purposes under this article, including:

162 (1) The payment, funding or refunding of the princi-
163 pal of, interest on or redemption premiums on, any
164 bonds, security interests or notes issued by it whether
165 the bonds, security interests, notes or interest to be
166 funded or refunded have or have not become due.

167 (2) The establishment or increase of reserves to secure
168 or to pay bonds, security interests, notes or the interest
169 thereon and all other costs or expenses of the authority
170 incident to and necessary or convenient to carry out its
171 corporate purposes and powers. Any bonds, security
172 interests or notes may be additionally secured by a
173 pledge of any revenues, funds, assets or moneys of the
174 authority from any source whatsoever.

175 (p) To issue renewal notes or security interests, to
176 issue bonds to pay notes or security interests and,
177 whenever it considers refunding expedient, to refund
178 any bonds by the issuance of new bonds, whether the
179 bonds to be refunded have or have not matured except
180 that no such renewal notes shall be issued to mature
181 more than ten years from date of issuance of the notes

182 renewed and no such refunding bonds may be issued to
183 mature more than twenty-five years from the date of
184 issuance.

185 (q) To apply the proceeds from the sale of renewal
186 notes, security interests or refunding bonds to the
187 purchase, redemption or payment of the notes, security
188 interests or bonds to be refunded.

189 (r) To borrow money from the consolidated fund
190 established by the provisions of subsection (b), section
191 eight, article six, chapter twelve of this code, in
192 accordance with the provisions of section five-b of this
193 article.

194 (s) To accept gifts or grants of property, funds,
195 security interests, money, materials, labor, supplies or
196 services from the United States of America or from any
197 governmental unit or any person, firm or corporation,
198 and to carry out the terms or provisions of, or make
199 agreements with respect to, or pledge, any gifts or
200 grants, and to do any and all things necessary, useful,
201 desirable or convenient in connection with the procur-
202 ing, acceptance or disposition of gifts or grants.

203 (t) To the extent permitted under its contracts with
204 the holders of bonds, security interests or notes of the
205 authority, to consent to any modification of the rate of
206 interest, time of payment of any installment of principal
207 or interest, security or any other term of any bond,
208 security interest, note or contract or agreement of any
209 kind to which the authority is a party.

210 (u) To sell security interests in the loan portfolio of the
211 authority. Such security interests shall be evidenced by
212 instruments issued by the authority. Proceeds from the
213 sale of security interests may be issued in the same
214 manner and for the same purposes as bond and note
215 revenues.

216 (v) To promulgate rules and regulations, in accor-
217 dance with the provisions of chapter twenty-nine-a of
218 this code, to implement and make effective the powers,
219 duties and responsibilities invested in the authority by
220 the provisions of this article and otherwise by law.

221 (w) To assume the responsibility for operation and

222 management of regional jail facilities under the juris-
223 diction of the state regional jail and prison authority
224 including the transportation of persons incarcerated
225 therein for all required purposes including, but not
226 limited to, court appearances and reasonable interviews
227 with their attorney or visitation with their family and
228 friends, all in the county seat of any county served by
229 the regional facility.

230 (x) To exercise all power and authority provided in
231 this article necessary and convenient to plan, finance,
232 construct, renovate, maintain and operate prisons after
233 first providing for regional jail facilities.

**§31-20-5b. Authority of the West Virginia board of
investments to make interest-bearing loans
to the West Virginia regional jail
authority.**

1 (a) The West Virginia board of investments as
2 heretofore created and constituted under the provisions
3 of article six, chapter twelve of this code, shall be ex
4 officio a board of investments for state and local
5 government funds in the consolidated fund established
6 under the provisions of subsection (b), section eight,
7 article six, chapter twelve of this code as they are made
8 available for borrowing by the West Virginia regional
9 jail authority in accordance with the provisions of this
10 section, and as such, the board of investments may
11 exercise all of the powers and functions granted to it
12 pursuant to the provisions of said article six in carrying
13 out the duties assigned to it under the provisions of this
14 section.

15 (b) Subject to the provisions of this section, the board
16 of investments, on such terms and conditions as it deems
17 appropriate, may invest moneys, securities and other
18 assets of the consolidated fund in the form of interest-
19 bearing loans to the regional jail authority for the
20 purpose of constructing a new facility for use as a
21 regional jail or prison facility or for the renovation or
22 acquisition of an existing facility for use as a regional
23 jail or prison facility.

24 (c) The terms of a loan made pursuant to the provi-

25 sions of subsection (b) of this section shall provide that
26 the loan is made upon the following findings of the
27 board of investments:

28 (1) That the prospective payments and appropriations
29 to the regional jail authority, together with the charac-
30 ter and value of any security pledged, furnish reasona-
31 ble assurance of repayment of the loan in accordance
32 with its terms;

33 (2) That the loan will bear interest at a rate deter-
34 mined by the board of investments to be reasonable,
35 taking into account the current average yield on
36 outstanding investments of the board of investments of
37 the state and local funds in the consolidated fund
38 established under the provisions of subsection (b),
39 section eight, article six, chapter twelve of this code.

40 (d) The authority of the board of investments to make
41 loans under the provisions of this article shall not at any
42 time exceed thirty-five million dollars in the aggregate
43 principal amount outstanding, nor shall it be used to
44 finance the construction or renovation of more than
45 seven facilities.

46 (e) Loans made under the provisions of this article
47 shall be payable in full not later than twenty-five years
48 from the date the loans are made.

49 (f) The board of investments shall require security for
50 the loans to be made under this article at the time the
51 commitment is made. Any commitment to make a loan
52 under the provisions of this article shall contain all of
53 the affirmative and negative covenants and other
54 protective provisions that the board of investments
55 determines are appropriate.

56 (g) The board of investments shall submit to the
57 Legislature annually a full report of its activities under
58 this section which it engaged in during any fiscal year
59 when any loan made under the provisions of this section
60 was outstanding.

61 (h) At any time an application for a loan under this
62 section is pending or a loan under this section is
63 outstanding, the board of investments is authorized to

64 inspect and copy all accounts, books, records, memo-
65 randa, correspondence, and other documents and
66 transactions of the regional jail authority. The legisla-
67 tive auditor shall make such audits as may be deemed
68 appropriate by the President of the Senate and the
69 Speaker of the House of Delegates of all accounts, books,
70 records, memoranda, correspondence, and other docu-
71 ments and transactions of the regional jail authority.
72 The legislative auditor shall report the results of all such
73 audits to the Legislature.

74 (i) The authority of the board of investments to make
75 loans under the provisions of this section shall expire on
76 the first day of July, one thousand nine hundred eighty-
77 seven.

CHAPTER 6

(Com. Sub. for S. B. 1—By Senators Tonkovich, Mr. President,
by request, and Harman)

[Passed July 23, 1986; in effect from passage. Approved by the Governor.]

AN ACT to repeal section twenty-six, article fifteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, four, five, six, seven, ten, eleven, thirteen, eighteen, twenty-one and twenty-two, article fifteen-a of said chapter; and to further amend said article fifteen-a by adding thereto three new sections, designated sections three-a, eight and ten-a, all relating to the compensating use tax; defining terms used therein; imposing tax on the use in this state of tangible personal property; exempting from tax property that is per se exempt from the consumers sales and service tax; exempting from payment of the use tax transactions for which persons may issue an exemption certificate under the consumers sales and service tax for the same type of property; exempting sales of property upon which the consumers sales and service tax has been paid; exempting tangible personal property brought into the state by

a nonresident for his or her use or enjoyment while temporarily in this state; providing rule for determining tax when a nonresident person or business moves into this state; creating presumption that tangible personal property sold for delivery in this state was sold for use or other consumption in this state; providing for tax to be collected by retailers or remitted directly to the state tax commissioner; requiring retailers engaging in business in this state and making sales of tangible personal property for delivery into this state or with the knowledge, directly or indirectly, that the property is intended for use in this state to collect the use tax; permitting retailers not engaging in business in this state to collect the use tax; prohibiting retailers from absorbing tax; making it a misdemeanor to absorb tax; requiring quarterly remittance of collected tax by retailers; requiring users who do not pay tax to a retailer to quarterly remit such tax directly to the tax commissioner; authorizing credit against tax due on use of tangible personal property for which sales tax was lawfully paid in another state; allowing such credit to be applied against tax due on gasoline and special fuel consumed in this state after the thirtieth day of June, one thousand nine hundred eighty-five, which was subject to sales tax in another state; providing for imposition of use tax on gasoline and special fuels consumed in this state; providing rules for imposition and calculation of such tax; authorizing tax commissioner to semiannually determine average wholesale price of gasoline and special fuel, with such average wholesale price of gasoline and special fuel to not be less than ninety-seven cents per gallon; providing rules for computation of tax due from motor carriers and for returns and payment of tax; dedicating such tax to highways; providing rules for construction of such tax; expressing legislative intent to tax gasoline and special fuel used or consumed in this state after the thirtieth day of June, one thousand nine hundred eighty-five; prohibiting the tax commissioner from refunding or establishing a credit for tax paid subsequent to said thirtieth day of June, when such claim for refund or credit is based on purported nonexistence of the tax;

placing burden on seller to prove that sale was not at retail; providing for this burden to be met by seller taking, in good faith, a properly executed exemption certificate signed by the purchaser; requiring retailers to keep books and records; authorizing tax commissioner to examine such books and records; authorizing tax commissioner to revoke the business registration certificate of a retailer engaging in business in this state or of a retailer not engaging in business in this state who is registered to collect use tax for failure to comply with the requirements of the use tax law; and providing effective dates.

Be it enacted by the Legislature of West Virginia:

That section twenty-six, article fifteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, two, three, four, five, six, seven, ten, eleven, thirteen, eighteen, twenty-one and twenty-two, article fifteen-a, chapter eleven of said code be amended and reenacted; and that said article fifteen-a be further amended by adding thereto three new sections, designated sections three-a, eight and ten-a, all to read as follows:

ARTICLE 15A. USE TAX.

- §11-15A-1. Definitions.
- §11-15A-2. Imposition of tax.
- §11-15A-3. Exemptions.
- §11-15A-3a. Moving residence or business into state.
- §11-15A-4. Evidence of use.
- §11-15A-5. How collected.
- §11-15A-6. Collection by retailer.
- §11-15A-7. Foreign retailers.
- §11-15A-8. Absorbing tax; criminal penalty.
- §11-15A-10. Payment to tax commissioner.
- §11-15A-10a. Credit for sales tax liability paid to another state.
- §11-15A-11. Liability of user.
- §11-15A-13. Tax on gasoline and special fuel.
- §11-15A-18. Seller must show sale not at retail; presumption.
- §11-15A-21. Books; examination.
- §11-15A-22. Canceling or revoking permits.

§11-15A-1. Definitions.

- 1 The following words, terms and phrases, when used
- 2 in this article, have the meanings ascribed to them in

3 this section, except where the context clearly indicates
4 that a different meaning is required:

5 (1) "Business" means any activity engaged in by any
6 person, or caused to be engaged in by any person, with
7 the object of direct or indirect economic gain, benefit or
8 advantage, and includes any purposeful revenue gener-
9 ating activity in this state.

10 (2) "Consumer" means any person purchasing tangi-
11 ble personal property from a retailer as defined in
12 paragraph (7).

13 (3) "Lease" includes rental, hire and license.

14 (4) "Person" includes any individual, firm, partner-
15 ship, joint venture, joint stock company, association,
16 public or private corporation, cooperative, estate, trust,
17 business trust, receiver, executor, administrator, any
18 other fiduciary, any representative appointed by order
19 of any court or otherwise acting on behalf of others, or
20 any other group or combination acting as a unit, and the
21 plural as well as the singular number.

22 (5) "Purchase" means any transfer, exchange or
23 barter, conditional or otherwise, in any manner or by
24 any means whatsoever, for a consideration.

25 (6) "Purchase price" means the total amount for
26 which tangible personal property is sold, valued in
27 money, whether paid in money or otherwise: *Provided*,
28 That cash discounts allowed and taken on sales shall not
29 be included.

30 (7) "Retailer" means and includes every person
31 engaging in the business of selling, leasing or renting
32 tangible personal property for use within the meaning
33 of this article, or in the business of selling, at auction,
34 tangible personal property owned by the person or
35 others for use in this state: *Provided*, That when in the
36 opinion of the tax commissioner it is necessary for the
37 efficient administration of this article to regard any
38 salesmen, representatives, truckers, peddlers or can-
39 vassers as the agents of the dealers, distributors,
40 supervisors, employees or persons under whom they

41 operate or from whom they obtain the tangible personal
42 property sold by them, irrespective of whether they are
43 making sales on their own behalf or on behalf of such
44 dealers, distributors, supervisors, employers or persons,
45 the tax commissioner may so regard them and may
46 regard the dealers, distributors, supervisors, employers,
47 or persons as retailers for purposes of this article.

48 (8) "Retailer engaging in business in this state" or any
49 like term, unless otherwise limited by federal statute,
50 shall mean and include, but not be limited to, any
51 retailer having or maintaining, occupying or using,
52 within this state, directly or by a subsidiary, an office,
53 distribution house, sales house, warehouse, or other
54 place of business, or any agent (by whatever name
55 called) operating within this state under the authority
56 of the retailer or its subsidiary, irrespective of whether
57 such place of business or agent is located here perman-
58 ently or temporarily, or whether such retailer or
59 subsidiary is admitted to do business within this state
60 pursuant to section forty-nine, article one, chapter
61 thirty-one of this code.

62 (9) "Sale" means any transaction resulting in the
63 purchase of tangible personal property from a retailer.

64 (10) "Seller" means a retailer, and includes every
65 person selling or leasing tangible personal property in
66 a transaction which is subject to the tax imposed by this
67 article.

68 (11) "Tax commissioner" or "commissioner" means the
69 state tax commissioner, or his delegate.

70 (12) "Tangible personal property" means tangible
71 goods, wares and merchandise when sold by a retailer
72 for use in this state.

73 (13) "Taxpayer" includes any person within the
74 meaning of this section, who is subject to a tax imposed
75 by this article, whether acting for himself or as a
76 fiduciary.

77 (14) "Use" means and includes the exercise by any
78 person of any right or power over tangible personal
79 property incident to the ownership, possession or

80 enjoyment of such property, or by any transaction in
81 which possession of or the exercise of any right or power
82 over tangible personal property is acquired for a
83 consideration, including any lease, rental or conditional
84 sale of tangible personal property. As used in this
85 definition, "enjoyment" includes a purchaser's right to
86 direct the disposition of the property, whether or not the
87 purchaser has possession of the property. The term "use"
88 does not include the keeping, retaining or exercising any
89 right or power over tangible personal property for the
90 purpose of subsequently transporting it outside the state
91 for use thereafter solely outside this state.

§11-15A-2. Imposition of tax.

1 (a) *General.* — An excise tax is hereby levied and
2 imposed on the use in this state of tangible personal
3 property to be collected and paid as hereinafter
4 provided, at the rate of five percent of the purchase
5 price of such property.

6 (b) Said tax is hereby imposed upon every person
7 using tangible personal property within this state. That
8 person's liability is not extinguished until such tax has
9 been paid. A receipt with the tax separately stated
10 thereon issued by a retailer engaged in business in this
11 state, or by a foreign retailer who is authorized by the
12 tax commissioner to collect the tax imposed by this
13 article, relieves the purchaser from further liability for
14 the tax to which the receipt refers.

15 (c) Purchases of tangible personal property made
16 from the government of the United States or any of its
17 agencies by ultimate consumers shall be subject to the
18 tax imposed by this section. Industrial materials and
19 equipment owned by the federal government within the
20 state of West Virginia of a character not ordinarily
21 readily obtainable within the state, shall not be subject
22 to use tax when sold, if such industrial materials and
23 equipment would not be subject to use taxes if such were
24 sold outside of the state for use in West Virginia.

25 (d) This article shall not apply to purchases made by
26 counties or municipal corporations.

§11-15A-3. Exemptions.

1 The use in this state of the following tangible personal
2 property is hereby specifically exempted from the tax
3 imposed by this article:

4 (1) All articles of tangible personal property brought
5 into the state of West Virginia by a nonresident
6 individual thereof for his or her use or enjoyment while
7 temporarily within this state or while passing through
8 this state, except gasoline and special fuel: *Provided*,
9 That fuel contained in the supply tank of a motor vehicle
10 that is not a motor carrier shall not be taxable.

11 (2) Tangible personal property, the gross receipts
12 from the sale of which are exempt from the sales tax
13 by the terms of article fifteen, chapter eleven of the code
14 of West Virginia, one thousand nine hundred thirty-one,
15 as amended, and the property is being used for the
16 purpose for which it was exempted.

17 (3) Tangible personal property, the gross receipts
18 from the sale of which are derived from the sale of
19 machinery, supplies and materials to contractors, or to
20 persons engaged in the business of manufacturing,
21 transportation, transmission, communication or in the
22 production of natural resources in this state: *Provided*,
23 That purchases of gasoline or special fuel from distrib-
24 utors or importers shall be taxable.

25 (4) Tangible personal property, the gross receipts or
26 the gross proceeds from the sale of which are required
27 to be included in the measure of the tax imposed by
28 article fifteen, chapter eleven of the code of West
29 Virginia, one thousand nine hundred thirty-one, as
30 amended, and upon which the tax imposed by said
31 article fifteen has been paid.

32 (5) Tangible personal property, the sale of which in
33 this state is not subject to the West Virginia consumers
34 sales tax.

35 (6) Mobile homes utilized by the owners thereof as
36 their principal year-round residence and dwelling:
37 *Provided*, That use of these mobile homes shall be
38 subject to tax at the three percent rate.

§11-15A-3a. Moving residence or business into state.

1 The tax imposed by this article shall not apply to
2 tangible personal property purchased outside this state
3 for use outside this state by a person who at that time
4 was a nonresident natural person, or a business entity
5 not actually doing business within this state, who or
6 which later brings such tangible personal property into
7 this state in connection with his establishment of a
8 permanent residence or business in this state: *Provided,*
9 That such property was purchased more than six
10 months prior to the date it was first brought into this
11 state, or six months prior to the establishment of such
12 residence or business, whichever first occurs.

§11-15A-4. Evidence of use.

1 For the purpose of the proper administration of this
2 article to prevent evasion of the tax, evidence that
3 tangible personal property was sold by any person for
4 delivery in this state shall be prima facie evidence that
5 such tangible personal property was sold for use in this
6 state.

§11-15A-5. How collected.

1 The tax herein imposed shall be collected in the
2 following manner:

3 (1) The tax upon the use of all tangible personal
4 property, which is sold by a retailer engaging in
5 business in this state, or by such other retailer as the
6 tax commissioner shall authorize pursuant to section
7 seven of this article shall be collected by such retailer
8 and remitted to the state tax commissioner, pursuant to
9 the provisions of sections six through ten, inclusive, of
10 this article.

11 (2) The tax upon the use of all tangible personal
12 property not paid pursuant to subsection one of this
13 section shall be paid to the tax commissioner directly by
14 any person using such property within this state,
15 pursuant to the provisions of section eleven of this
16 article.

§11-15A-6. Collection by retailer.

1 (a) Every retailer engaging in business in this state
2 and making sales of tangible personal property for
3 delivery into this state, or with the knowledge, directly
4 or indirectly, that the property is intended for use in this
5 state, that are not exempted under the provisions of
6 section three of this article, shall at the time of making
7 such sales, whether within or without the state, collect
8 the tax imposed by this article from the purchaser, and
9 give to the purchaser a receipt therefor in the manner
10 and form prescribed by the tax commissioner, if the tax
11 commissioner shall, by regulation, so prescribe.

12 (b) Each such retailer shall list with the tax commis-
13 sioner the name and address of all his agents operating
14 in this state, and the location of any and all distribution
15 or sales houses or offices or other places of business in
16 this state.

§11-15A-7. Foreign retailers.

1 The tax commissioner may, in his discretion, upon
2 application authorize the collection of the tax herein
3 imposed by any retailer not engaging in business within
4 this state, who, to the satisfaction of the tax commis-
5 sioner, furnishes adequate security to ensure collection
6 and payment of the tax. Such retailer shall be issued,
7 without charge, a permit to collect such tax in such
8 manner, and subject to such regulations and agreements
9 as the tax commissioner shall prescribe. When so
10 authorized, it shall be the duty of such retailer to collect
11 the tax upon all tangible personal property sold to his
12 knowledge for use within this state, in the same manner
13 and subject to the same requirements as a retailer
14 engaging in business within this state. Such authority
15 and permit may be canceled when, at any time, the tax
16 commissioner considers the security inadequate, or that
17 such tax can more effectively be collected from the
18 person using such property in this state.

§11-15A-8. Absorbing tax; criminal penalty.

1 It shall be unlawful for any retailer to advertise or
2 hold out or state to the public or to any purchaser,

3 consumer or user, directly or indirectly, that the tax or
4 any part thereof imposed by this article will be assumed
5 or absorbed by the retailer or that it will not be added
6 to the selling price of the property sold, or if added that
7 it or any part thereof will be refunded. The tax
8 commissioner shall have the power to adopt and
9 promulgate rules and regulations for adding such tax,
10 or the equivalent thereof, by providing different
11 methods applying uniformly to retailers within the same
12 general classification for the purpose of enabling such
13 retailers to add and collect, as far as practicable, the
14 amount of such tax. Any person violating any of the
15 provisions of this section within this state shall be guilty
16 of a misdemeanor and subject to the penalties provided
17 in section twenty of this article.

§11-15A-10. Payment to tax commissioner.

1 Each retailer required or authorized, pursuant to
2 section six or seven, to collect the tax herein imposed,
3 shall be required to pay to the tax commissioner the
4 amount of such tax on or before the fifteenth day of the
5 month next succeeding each quarterly period. At such
6 time, each retailer shall file with the tax commissioner
7 a return for the preceding quarterly period in such form
8 as may be prescribed by the tax commissioner showing
9 the sales price of any or all tangible personal property
10 sold by the retailer during such preceding quarterly
11 period, the use of which is subject to the tax imposed
12 by this article, and such other information as the tax
13 commissioner may deem necessary for the proper
14 administration of this article. The return shall be
15 accompanied by a remittance of the amount of such tax,
16 for the period covered by the return: *Provided*, That
17 where such tangible personal property is sold under a
18 conditional sales contract, or under any other form of
19 sale wherein the payment of the principal sum, or a part
20 thereof is extended over a period longer than sixty days
21 from the date of sale thereof, the retailer may collect
22 and remit each quarterly period that portion of the tax
23 equal to five percent of that portion of the purchase
24 price actually received during such quarterly period.
25 The tax commissioner, if he deems it necessary in order

26 to ensure payment to the state of the amount of such tax,
27 may in any or all cases require returns and payments
28 of such amount to be made for other than quarterly
29 periods. The tax commissioner may, upon request and
30 a proper showing of the necessity therefor, grant an
31 extension of time not to exceed thirty days for making
32 any return and payment. Returns shall be signed by the
33 retailer or his duly authorized agent, and must be
34 certified by him to be correct.

§11-15A-10a. Credit for sales tax liability paid to another state.

1 (a) A person is entitled to a credit against the tax
2 imposed by this article on the use of a particular item
3 of tangible personal property equal to the amount, if
4 any, of sales tax lawfully paid to another state for the
5 acquisition of that property: *Provided*, That the amount
6 of credit allowed shall not exceed the amount of use tax
7 imposed on the use of the property in this state.

8 (b) For purposes of this section:

9 (1) "Sales tax" includes a sales tax or compensating
10 use tax imposed on the use of tangible personal property
11 by the state in which the sale occurred; and

12 (2) "State" includes the District of Columbia but does
13 not include any of the several territories organized by
14 Congress.

15 (c) This section shall apply to claims for refund or
16 credit of use tax filed after the thirty-first day of
17 August, one thousand nine hundred eighty-six, for
18 taxable purchases made on or after the first day of July,
19 one thousand nine hundred eighty-five, that were legally
20 subject to a sales tax or compensating use tax paid in
21 another state and then also taxed under this article.

§11-15A-11. Liability of user.

1 Any person who uses any tangible personal property
2 upon which the tax herein imposed has not been paid
3 either to a retailer or direct to the tax commissioner as
4 herein provided, shall be liable therefor, and shall on or
5 before the fifteenth day of the month next succeeding

6 each quarterly period pay the tax herein imposed upon
7 all such property used by him during the preceding
8 quarterly period in such manner and accompanied by
9 such returns as the tax commissioner shall prescribe.
10 All of the provisions of section ten with reference to such
11 returns and payments shall be applicable to the returns
12 and payments herein required.

§11-15A-13. Tax on gasoline and special fuel.

1 (a) *Imposition of tax.*

2 (1) *On deliveries in this state.* — Gasoline or special
3 fuel furnished or delivered within this state to consu-
4 mers or users is subject to tax at the rate imposed by
5 section two of this article: *Provided*, That the amount of
6 tax due under section two shall in no event be less than
7 five percent of the average wholesale price of gasoline
8 and special fuel and with such price to, in no case, be
9 deemed to be less than ninety-seven cents per gallon for
10 all gallons of gasoline and special fuel taxable under
11 section two of this article.

12 (2) *On purchases out of state.* — An excise tax is
13 hereby imposed on the use or consumption in this state
14 of gasoline or special fuel purchased outside this state
15 at the rate of five percent of the average wholesale price
16 of such gasoline or special fuel, as determined under
17 subsection (c), notwithstanding any provision of this
18 article to the contrary: *Provided*, That gasoline or
19 special fuel contained in the supply tank of a motor
20 vehicle that is not a motor carrier shall not be taxable,
21 except that gasoline or special fuel imported in the
22 supply tank or auxiliary tank of construction equipment,
23 mining equipment, track maintenance equipment or
24 other similar equipment, shall be taxed in the same
25 manner as that in the supply tank of a motor carrier.

26 (b) *Definitions.* — Terms used in this section shall
27 have the same meaning as when used in a comparable
28 context in section eighteen, article fifteen of this
29 chapter.

30 (c) *Determination of average wholesale price.*

31 (1) To simplify determining the average wholesale

32 price of all gasoline and special fuel, the tax commis-
33 sioner shall, effective with the period beginning the first
34 day of the month of the effective date of this section and
35 each first day of January, annually, thereafter, deter-
36 mine the average wholesale price of gasoline and special
37 fuel for each annual period, on the basis of sales data
38 gathered for the preceding period of the first day of July
39 through the thirty-first day of October. Notification of
40 the average wholesale price of gasoline and special fuel
41 shall be given by the tax commissioner at least thirty
42 days in advance of each first day of January, annual
43 period, by filing notice of the average wholesale price
44 in the state register, and by such other means as the tax
45 commissioner deems reasonable: *Provided*, That notice
46 of the average wholesale price of gasoline and special
47 fuel for the first period shall be timely given if filed in
48 the state register on the effective date of this section.

49 (2) The "average wholesale price" shall mean the
50 single, statewide average per gallon wholesale price,
51 rounded to the third decimal (thousandth of a cent),
52 exclusive of state and federal excise taxes on each gallon
53 of gasoline or diesel fuel, as determined by the tax
54 commissioner from information furnished by distribu-
55 tors of gasoline or special fuel in this state, or such other
56 information regarding wholesale selling prices as the
57 tax commissioner may gather, or a combination of such
58 information: *Provided*, That in no event shall the
59 average wholesale price be determined to be less than
60 ninety-seven cents per gallon of gasoline or special fuel.

61 (3) All actions of the tax commissioner in acquiring
62 data necessary to establish and determine the average
63 wholesale price of gasoline and special fuel, in providing
64 notification of his determination prior to the effective
65 date of any change in rate, and in establishing and
66 determining the average wholesale price of fuel, may be
67 made by the tax commissioner without compliance with
68 the provisions of article three, chapter twenty-nine-a of
69 this code.

70 (4) In any administrative or court proceeding brought
71 to challenge the average wholesale price of gasoline and
72 special fuel as determined by the tax commissioner, his

73 determination shall be presumed to be correct and shall
74 not be set aside unless it is clearly erroneous.

75 (d) *Computation of tax due from motor carriers.* —
76 Every person who operates or causes to be operated a
77 motor carrier in this state shall pay the tax imposed by
78 this section on the average wholesale price of all gallons
79 of gasoline or special fuel used in the operation of any
80 motor carrier within this state, under the following
81 rules:

82 (1) The total amount of gasoline or special fuel used
83 in the operation of the motor carrier within this state
84 shall be that proportion of the total amount of gasoline
85 and special fuel used in any motor carrier's operations
86 within and without this state, that the total number of
87 miles traveled within this state bears to the total
88 number of miles traveled within and without this state.

89 (2) A motor carrier shall first determine the gross
90 amount of tax due under this section on the average
91 wholesale value, determined under subsection (c), of all
92 gasoline and special fuel used in the operation of the
93 motor carrier within this state during the preceding
94 quarter, as if all gasoline and special fuel had been
95 purchased outside this state.

96 (3) Next, the taxpayer shall determine the total tax
97 paid under article fifteen of this chapter on all gasoline
98 and special fuel purchased in this state for use in the
99 operation of the motor carrier.

100 (4) The difference between (2) and (3) is the amount
101 of tax due under this article when (2) is greater than
102 (3), or the amount to be refunded or credited to the
103 motor carrier when (3) is greater than (2), which refund
104 or credit shall be allowed in the same manner and under
105 the same conditions as a refund or credit is allowed for
106 the tax imposed by article fourteen-a of this chapter.

107 (e) *Return and payment of tax.* — Tax due under this
108 article on the uses or consumption in this state of
109 gasoline or special fuel shall be paid by each taxpayer
110 on or before the twenty-fifth day of January, April, July
111 and October of each year, notwithstanding any provision

112 of this article to the contrary, by check, bank draft,
113 certified check or money order, payable to the tax
114 commissioner, for the amount of tax due for the
115 preceding quarter. Every taxpayer shall make and file
116 with his remittance, a return showing such information
117 as the tax commissioner may require.

118 (f) *Compliance.* — To facilitate ease of administration
119 and compliance by taxpayers, the tax commissioner may
120 require motor carriers liable for the taxes imposed by
121 this article on the use of gasoline or special fuel in the
122 operation of motor carriers within this state, and the tax
123 imposed by article fourteen-a of this chapter on such
124 gallons of fuel, to file a combined return and make a
125 combined payment of the tax due under this article and
126 article fourteen-a of this chapter on such fuel. In order
127 to encourage use of a combined return and the making
128 of a single payment each quarter for both taxes, the due
129 date of the return and tax due under article fourteen-
130 a of this chapter is hereby changed from the last day
131 of January, April, July and October of each calendar
132 year, to the twenty-fifth day of such months, notwith-
133 standing any provisions in article fourteen-a of this
134 chapter to the contrary.

135 (g) *Dedication of tax to highways.* — All tax collected
136 under the provisions of this section after deducting the
137 amount of any refunds lawfully paid shall be deposited
138 in the "road fund" in the state treasurer's office, and
139 shall be used only for the purpose of construction,
140 reconstruction, maintenance and repair of highways,
141 and payment of principal and interest on state bonds
142 issued for highway purposes.

143 (h) *Construction.* — The tax imposed by this article on
144 the use of gasoline or special fuel in this state shall not
145 be construed as taxing any gasoline or special fuel which
146 the state is prohibited from taxing under the constitu-
147 tion of this state or the constitution or laws of the United
148 States.

149 (i) *Effective date.* — The provisions of this section and
150 the amendments to section three of this article took

151 effect on the first day of April, one thousand nine
152 hundred eighty-three.

153 (j) *Validation.* — Inasmuch as there is currently
154 litigation challenging the lawfulness of this section in
155 the situation where a motor carrier purchases gasoline
156 or special fuel in another state paying to that other state
157 a sales tax thereon and then consumes that gasoline or
158 special fuel in its operation of a motor carrier in this
159 state, without being statutorily allowed a credit for such
160 sales tax against the tax imposed by this article with
161 respect to such gallonage of tax paid fuel consumed in
162 this state; and inasmuch as section ten-a of this article
163 reestablishes the allowance of such a credit and makes
164 such allowance effectively retroactive and applicable to
165 gasoline and special fuel consumed in this state after the
166 thirtieth day of June, one thousand nine hundred eighty-
167 five, the purported constitutional infirmity is cured. To
168 avoid any question about whether this section was in
169 effect subsequent to the thirtieth day of June, one
170 thousand nine hundred eighty-five, this section is
171 reenacted and expressly made retroactive to the first
172 day of July, one thousand nine hundred eighty-five, and
173 the tax commissioner shall not refund or credit any tax
174 previously paid under this section due to a claim that
175 the tax was not lawfully imposed subsequent to the
176 thirtieth day of June, one thousand nine hundred eighty-
177 five.

**§11-15A-18. Seller must show sale not at retail;
presumption.**

1 The burden of proving that a sale was not taxable
2 shall be upon the seller, unless he, in good faith, takes
3 from the purchaser a certificate signed by and bearing
4 the address of the purchaser setting forth the reason for
5 exemption of the sale from imposition of the tax. To
6 prevent evasion it shall be presumed that all proceeds
7 are subject to the tax until the contrary is clearly
8 established. This certificate shall be substantially in the
9 form prescribed by the tax commissioner.

§11-15A-21. Books; examination.

1 (a) Every retailer required or authorized to collect

2 taxes imposed by this article and every person using in
3 this state tangible personal property purchased on or
4 after the first day of July, one thousand nine hundred
5 fifty-one, shall keep such records, receipts, invoices, and
6 other pertinent papers as the tax commissioner shall
7 require, in such form as the tax commissioner shall
8 require.

9 (b) In addition to the tax commissioner's powers set
10 forth in article ten of this chapter, the tax commissioner
11 or any of his duly authorized agents is hereby authorized
12 to examine the books, papers, records and equipment of
13 any person who either:

14 (1) Is selling tangible personal property ; or

15 (2) Is liable for the tax imposed by this article, and
16 to investigate the character of the business of any such
17 person in order to verify the accuracy of any return
18 made, or if no return was made by such person, to
19 ascertain and determine the amount due under the
20 provisions of this article. Any such books, papers and
21 records shall be made available within this state for
22 such examination upon reasonable notice when the tax
23 commissioner shall deem it advisable and shall so order.
24 However, where the taxpayer's records must be kept
25 out-of-state, the taxpayer may upon being notified by the
26 tax commissioner that an examination is to be made,
27 elect to do one of the following: (1) Forthwith transport
28 the required records to a convenient point in West
29 Virginia and notify the tax commissioner that they are
30 available; or (2) pay the reasonable traveling expenses
31 of the tax commissioner's representatives from Charles-
32 ton, West Virginia, to the out-of-state place where the
33 records are kept, and return, and reasonable living
34 expenses of such representatives while engaged in their
35 examination.

§11-15A-22. Canceling or revoking permits.

1 Whenever any retailer engaging in business in this
2 state, or authorized to collect the tax herein imposed
3 pursuant to section seven of this article, fails to comply
4 with any of the provisions of this article or any orders,
5 rules or regulations of the tax commissioner prescribed

6 and adopted for this article under article ten of this
7 chapter, the tax commissioner may, upon notice and
8 hearing, hereinafter provided, by order, cancel the
9 business registration certificate, if any, issued to such
10 retailer under article twelve, chapter eleven of the code
11 of West Virginia, one thousand nine hundred thirty-one,
12 as amended, or if such retailer is a corporation autho-
13 rized to do business in this state under section forty-
14 nine, article one, chapter thirty-one of said code, may
15 certify to the secretary of state a copy of an order
16 finding that such retailer has failed to comply with
17 certain specified provisions, orders, rules or regulations.
18 The secretary of state shall, upon receipt of such
19 certified copy, revoke the permit authorizing said
20 corporation to do business in this state, and shall issue
21 a new permit only when such corporation shall have
22 obtained from the tax commissioner an order finding
23 that such corporation has complied with its obligations
24 under this article. No order authorized in this section
25 shall be made until the retailer is given an opportunity
26 to be heard and to show cause why such order should
27 not be made, and he shall be given twenty days' notice
28 of the time, place and purpose of such hearing, which
29 shall be heard as provided in section nine, article ten
30 of this chapter. The tax commissioner shall have the
31 power in his discretion to issue a new business registra-
32 tion certificate after such canceling.

RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 4

(By Mr. Speaker, Mr. Albright)

[Adopted July 20, 1986.]

Rescinding and nullifying the action of the Legislature, at the Regular Session thereof in the year 1985, in the adoption of House Joint Resolution No. 19, Warehouse Freeport Tax Amendment, and withdrawing the same from submission to the voters of the State at the general election to be held in November, 1986.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That, pursuant to and in accordance with the provisions set forth in section one, article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the action of the Legislature, at the Regular Session thereof in the year 1985, in the adoption of House Joint Resolution No. 19, Warehouse Freeport Tax Amendment, is hereby rescinded and nullified; and, be it

Further resolved, That, pursuant to and in accordance with said provisions, the aforesaid House Joint Resolution No. 19 be, and is hereby, withdrawn from submission to the voters at the general election to be held in November, 1986.

SENATE CONCURRENT RESOLUTION 2

(Originating in the Senate Committee on Finance)

[Adopted July 20, 1986.]

Providing for the removal of "Amendment No. 5" designated as the "Highway Improvement and Bridge Amendment" from the November 1986 general election ballot.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of "Amendment No. 5" designated as the "Highway Improvement and Bridge

Amendment" S.J.R. 20 adopted during the 1986 Regular Session, by the voters of the State at the next general election to be held in the year one thousand nine hundred eighty-six be withdrawn from consideration and removed from the ballot in accordance with section one, article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

HOUSE JOINT RESOLUTION 1

(By Mr. Speaker, Mr. Albright, and Delegate Swann,
by request of the Executive)

[Adopted July 22, 1986.]

Proposing an amendment to the Constitution of the State of West Virginia, amending article ten thereof by adding a new section, designated section one-c, relating to ad valorem property taxation; exempting certain tangible personal property of inventory and warehouse goods from such tax when such property is in the stream of interstate commerce or in transit through the State and acquires no tax situs in the State; requiring phase in of exemption on graduated percentage basis for each year over a period of five consecutive assessment years; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such amendment."

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred eighty-six, which proposed amendment is that article ten thereof be amended by adding thereto a new section, designated section one-c, to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§1c. Exemption from ad valorem taxation of certain personal property of inventory and warehouse goods, with phase in to full exemption over five-year period.

1 Notwithstanding any other provisions of this Consti-

2 tution, tangible personal property which is moving in
3 interstate commerce through or over the territory of the
4 State of West Virginia, or which was consigned from a
5 point of origin outside the State to a warehouse, public
6 or private, within the State for storage in transit to a
7 final destination outside the State, whether specified
8 when transportation begins or afterward, but in any
9 case specified timely for exempt status determination
10 purposes, shall not be deemed to have acquired a tax
11 situs in West Virginia for purposes of ad valorem
12 taxation and shall be exempt from such taxation, except
13 as otherwise provided in this section. Such property
14 shall not be deprived of such exemption because while
15 in the warehouse the personal property is assembled,
16 bound, joined, processed, disassembled, divided, cut,
17 broken in bulk, relabeled, or repackaged for delivery out
18 of state, unless such activity results in a new or different
19 product, article, substance or commodity, or one of
20 different utility. Personal property of inventories of
21 natural resources shall not be exempt from ad valorem
22 taxation unless required by paramount federal law.

23 The exemption allowed by the preceding paragraph
24 shall be phased in over a period of five consecutive
25 assessment years, at the rate of one fifth of the assessed
26 value of the property per assessment year, beginning the
27 first day of July, one thousand nine hundred eighty-
28 seven.

29 *Resolved further,* That in accordance with the provi-
30 sions of article eleven, chapter three of the code of West
31 Virginia, one thousand nine hundred thirty-one, as
32 amended, such proposed amendment is hereby num-
33 bered "Amendment No. 3" and designated the "Ware-
34 house Freeport Tax Exemption Amendment" and the
35 purpose of this proposed amendment is summarized as
36 follows: "To exempt certain personal property of
37 inventory and warehouse goods from ad valorem
38 property tax when such property is in the flow of
39 interstate commerce or in transit and consignment to a
40 warehouse, public or private, within the State for
41 delivery to a destination outside the State, with grad-
42 uated phase in to full exemption over a five-year period."

HOUSE JOINT RESOLUTION 6
(By Delegates Jordan and Smith)

[Adopted July 23, 1986.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section six, article twelve thereof, relating to the division of the State into school districts; providing that the present districts shall continue until changed by legislative action; describing the method of election for school board members and establishing residency requirements for such board members; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred eighty-six, which proposed amendment is that section six, article twelve thereof be amended to read as follows:

ARTICLE XII. EDUCATION.

§6. School districts.

1 The school districts into which the state is now divided
2 shall continue until changed pursuant to act of the
3 Legislature: *Provided*, That the school board of any
4 district shall be elected by the voters of the respective
5 district without reference to political party affiliation.
6 No more than two of the members of such board may
7 be residents of the same magisterial district within any
8 school district.
9

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 num-
14 bered "Amendment No. 6" and designated as the "School
15 Board Members Amendment" and the purpose of the
16 proposed amendment is summarized as follows: "To
17 provide for the election of school board members and

- 18 restricting the number of members in the same mag-
19 isterial district.”

SENATE JOINT RESOLUTION 2
(By Senators Tonkovich, Mr. President,
by request, and Harman)

[Adopted July 23, 1986.]

Proposing an amendment to the Constitution of the State of West Virginia, providing for the collection and levy of an additional consumers sales and service tax in the amount of one percent to be paid to the state road fund and dedicated to the purposes of such fund as appropriated by the Legislature; authorizing the issuance and sale of state road bonds not exceeding the aggregate principal amount of five hundred million dollars; dedicating the additional consumers sales and service tax for the payment of such bonds; providing that no more than one hundred million dollars of such bonds shall be issued in any one year; providing for the competitive bidding of all brokerage fees and legal fees; providing for the retirement of such bonds and the termination of the tax imposed; clarifying the taxing authority of the Legislature; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the general election to be held in the year one thousand nine hundred eighty-six, for the purpose of presenting to the voters of the State the question of ratification or rejection of one or more constitutional amendments, which proposed amendment is as follows:

HIGHWAY AND BRIDGE IMPROVEMENT AMENDMENT

- 1 (a) In addition to any other taxing power presently
2 reposing with the Legislature or conferred upon it by
3 this Constitution, the Legislature shall by general law
4 impose a general consumers sales and service tax of the

5 nature heretofore imposed by general law, at a rate of
6 one percent, which tax shall be subject to such condi-
7 tions, exceptions and terms as shall be provided by law
8 and shall be in addition to any like tax now or hereafter
9 imposed and shall be paid into the state road fund and
10 dedicated to the purposes of such fund as appropriated
11 by the Legislature to construct, reconstruct, upgrade
12 and renovate highways and bridges throughout West
13 Virginia to promote economic development, to facilitate
14 industrial access and to improve the highway network
15 of this state.

16 (b) The Legislature shall have power to authorize the
17 issuing and selling of state bonds not exceeding the
18 aggregate principal amount of five hundred million
19 dollars, and with no more than one hundred million
20 dollars of such aggregate principal amount to be issued
21 or sold in any fiscal year. The purpose of these bonds
22 shall be to construct new highways and new or replace-
23 ment bridges throughout West Virginia to promote
24 economic development, to facilitate industrial access and
25 to improve the highway network: *Provided*, That on the
26 first day of every regular legislative session, the
27 Department of Highways, or its successor, shall present
28 to the Legislature a detailed plan, with particular
29 attention to regional transportation and economic needs
30 including specific projects for expenditure of any bond
31 revenues. Such plan shall not be binding upon the
32 Legislature.

33 The Legislature shall have power to authorize the
34 issuing and selling of state bonds to refund any bonds
35 issued and sold as aforesaid: *Provided*, That the
36 actuarially determined present value of the debt service
37 on the refunding bonds is less than that of the bonds
38 being refunded.

39 (c) The Legislature shall provide that the additional
40 consumers sales and service tax authorized by this
41 amendment to be levied, collected and dedicated to the
42 state road fund shall first be pledged to pay annually
43 the interest on any such bonds issued under authority
44 of this amendment and the principal thereof within and
45 not exceeding twenty years or such shorter term of years

46 as prescribed by the Legislature, notwithstanding the
47 provisions of article ten, section four of the Constitution
48 of West Virginia. To the extent such additional consu-
49 mers sales and service tax collected and dedicated to the
50 state road fund pursuant to this amendment in any year
51 exceeds the amount necessary to pay the debt service
52 accruing on any and all outstanding bonds issued under
53 authority of this amendment, such excess moneys shall
54 be used for the purposes of the state road fund as
55 appropriated by the Legislature. All brokerage fees
56 along with all legal fees incurred as a result of this bond
57 offering shall be bid out on a competitive bid basis to
58 those brokerage houses and nationally recognized bond
59 counsel with offices in West Virginia.

60 (d) The additional tax required to be imposed by the
61 provisions of this amendment shall terminate and expire
62 when all bonds issued pursuant thereto and the interest
63 thereon have been retired or discharged in their
64 entirety. Nothing herein, however, shall be construed so
65 as to limit the general taxing power of the Legislature.

66 *Further resolved*, That in accordance with the provi-
67 sions of article eleven, chapter three of the code of West
68 Virginia, one thousand nine hundred thirty-one, as
69 amended, such proposed amendment is hereby num-
70 bered "Amendment No. 5" or as to be determined by the
71 Secretary of State, and designated as the "Highway and
72 Bridge Improvement Amendment" and the purpose of
73 the proposed amendment is summarized as follows: "To
74 provide for the levy and collection of an additional
75 consumers sales and service tax at the rate of one
76 percent to be paid to the state road fund and dedicated
77 to the purposes of such fund as appropriated by the
78 Legislature to construct, reconstruct, upgrade and
79 renovate highways and bridges throughout West Virgi-
80 nia to promote economic development, to facilitate
81 industrial access and to improve the highway network;
82 and to empower the Legislature to authorize the issuing
83 and selling of state bonds the proceeds of which shall
84 be used to construct new highways and new and
85 replacement bridges throughout West Virginia to

86 promote economic development, facilitate industrial
87 access and to improve the highway network. These
88 bonds shall not exceed the aggregate principal amount
89 of five hundred million dollars and with no more than
90 the principal amount of one hundred million dollars of
91 bonds to be issued in any fiscal year. The consumers
92 sales and service tax shall be levied, collected and
93 dedicated to pay the interest on and principal of such
94 bonds, and any excess funds so collected and dedicated
95 shall be used for the purposes of the state road fund as
96 appropriated by the Legislature. All brokerage fees
97 along with all legal fees incurred as a result of this bond
98 offering shall be bid out on a competitive bid basis to
99 those brokerage houses and nationally recognized bond
100 counsel with offices in West Virginia.”

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